MANU-SMṚTI

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THE LAWS OF MANU WITH THE BHĀṢYA OF MĒDHĀTITHI

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VERSE CCII

IF THE SOURCE CANNOT BE TRACED, THE PERSON (BUYER), WHOSE CONDUCT HAS BEEN CLEARED BY THE FACT OF THE SALE BEING PUBLIC, IS LET OFF WITHOUT PUNISHMENT, BUT THE MAN WHO LOST THE PROPERTY SHALL RECEIVE IT BACK.—(202)

Bhāṣya.

It has been laid down that purchases shall be made from persons not suspected of dishonesty; hence where the seller is capable of being produced, the rule just quoted becomes applicable; but if the man having sold the property goes away,—and '*the source*,'—the seller—cannot be produced by the man who bought from him the property that is now recognised by its real owner as his own,—then the purchaser has his character cleared by the fact that he made the purchase in the open market,—in the presence of a large number of men: and on that account he is let off without punishment.

But the property is restored to the rightful owner, '*the person who had lost it*' and then recognised it as his own.

The term '*nāṣṭikaḥ*' means *he who has lost*, derived from the participial noun '*naṣṭa*' with the possessive affix '*than*' and then the reflexive affix '*aṇ*'; or it may be explained as meaning 'he who is seeking for his lost property.'

The sense in brief is this:—In the case of a public sale, there is to be no punishment, but the loss of the price paid remains—(202).

VERSE CCIII

ANY COMMODITY THAT IS MIXED UP WITH ANOTHER SHOULD NOT BE SOLD; NOR WHAT IS WITHOUT SUBSTANCE, NOR WHAT IS DEFICIENT, NOR WHAT IS AT A DISTANCE, NOR WHAT IS CONCEALED.—(203).

Bhāṣya.

In course of the treatment of 'Sale without Ownership,' the author proceeds to lay down other rules also in connection with sales.

'*Any commodity*'—such as saffron—'*that is mixed up with another*'—commodity, which is of an inferior quality, and which is only similar to it—such as the *kusumbha* flower —'*should not be sold.*'

'*Nor what is without substance*'—*i.e.*, which, having been kept closed in a vessel for a long time, has lost its substance, has become defective and decays, though appearing as fresh; *e.g.* cloth and other commodities.

'*Nor what is deficient*';—*i.e.*, less in weight or measure.

'*Nor what is at a distance*'—away from the place of sale; and described as 'clothes or sugar or such things lying in my house in the village.'

'*Nor what is concealed*'—tied up and hidden in a piece of cloth: or the real form of which is hidden by the colour of another substance; what is old but appears to be new is also called 'concealed.'

Commodity of these kinds should not be sold; it shall be sold after having been fully exposed and described; sales effected otherwise are invalid; and there would be nothing wrong in such being revoked even after the lapse of ten days.

Since no penalty in connection with this is here prescribed, it shall be understood to be what has been laid down in 193 in connection with 'fraudulent transactions' in general.

Others, however, hold that since that penalty is laid down in another context, that in connection with what is referred to here must be what has been prescribed for 'selling without ownership.'—(203)

VERSE CCIV

AFTER ONE DAMSEL HAS BEEN SHOWN, IF ANOTHER BE GIVEN TO THE BRIDEGROOM, THEN HE SHOULD MARRY BOTH OF THEM FOR THE SAME SINGLE PRICE,—SO MANU HAS ORDAINED. —(204)

Bhāṣya.

Since the present context is dealing with matters relating to sales, it lays down certain rules relating to maidens given in marriage for a price.

At the time of receiving the price, if the man shows a beautiful girl, but after having received it, he gives an ugly one, or one not of proper age, or of inferior qualifications,—then for that same price, the bridegroom shall marry both the girls.

The rule here laid down pertains to the case of girls only, that relating to similar frauds in connection with the selling of cattle and other goods shall be laid down later on.—(204)

VERSE CCV

THE GIVER OF A GIRL WHO IS INSANE OR LEPROUS OR HAS SUFFERED COPULATION, DOES NOT DESERVE PUNISHMENT, IF HE HAS PREVIOUSLY DECLARED HER DEFECTS.—(205)

Bhāṣya.

By the declaration that one does not deserve punishment by giving a girl suffering from the defects of insanity and the rest, after having openly declared them,—what is meant is that by giving her without declaring the defects, one does become liable to punishment.

Not only in the case of the girl given for a price, but also in that of others, who is going to be married by the '*Brāhma*' and other forms,—the betrothal becomes invalidated, and the penalty is that 'the man becomes guilty of theft' (verse 198),—if he does it intentionally; the case in which

it is done unintentionally does not fall within the scope of the present context (which deals with '*fraud*').

The construction is as follows :—'If the man openly declares, at the time of betrothal, the defect of the '*insane*' girl, *i.e.*, insanity,—of the '*leprous*' girl—*i.e.*, leprosy—of the girl who '*has suffered copulation*,'—*i.e.*, loss of virginity,—by saying 'this girl has such and such a defect,'—then he is not liable to punishment.—(205)

XXXIV.—Joint Concerns

VERSE CCVI

IF A PRIEST APPOINTED AT A SACRIFICE ABANDONS HIS WORK, HIS ASSOCIATES SHALL PAY HIM ONLY SUCH SHARE AS MAY BE IN KEEPING WITH THE WORK ACTUALLY DONE BY HIM. —(206)

Bhāṣya.

This verse introduces the head of 'Joint Concerns': and as an example, the author takes up the case of 'Joint action' at Vedic rites.

'*Sacrifice*'—The Jyotiṣṭoma and the rest. For the proper performance of the numerous details of these sacrifices, when a certain '*priest has been appointed*,'—with the words—'you should perform the duties of the '*Hotṛ*,' or 'of the *Adhvaryu*,' or 'of the *Udgātṛ*,'—and the further condition is made—'you should do the work according to the *shrauta-rules*';—if, on account of his inefficiency or other causes, he happens to abandon it after it has been half-done,—then the share of the sacrificial fee payable to him shall be in accordance with the amount of work done by him. For instance, if the man goes away after having done only a fourth part of his work, he should be paid the quarter of the third part of the entire 'fee' prescribed in connection with the particular sacrifice concerned. This would be '*in accordance with the work done.*'

'*By his associates*'—*i.e.*, the other priests, the *Hotṛ*, the *Udgātṛ* and the rest.—(206)

VERSE CCVII

HE WHO ABANDONS HIS WORK AFTER THE FEES HAVE BEEN PAID, SHOULD RECEIVE HIS FULL SHARE; AND THE WORK SHOULD BE GOT DONE BY ANOTHER.—(207)

Bhāṣya.

The sacrificial fees are paid at the 'Mid-day Extraction'; if a priest gives up his work after that, the fee paid to him shall not be refunded; he '*should receive it*'—*i.e.*, he should not be made to refund it.

The work should be completed by the sacrificer, through another person, paying him an additional fee. This has been added with a view to preclude the following notion—"Everything in connection with sacrifices should be done by *priests*,—persons become *priests* when they have been appointed as such,—this appointment can be made only at the prescribed time, which is before the commencement of the performance, so that if an appointment were to be made during the performance, it would become defective,—and yet the performance has got to be finished,—and if it has to be finished in a defective form, I shall get only those details performed which can be done by the priests other than the one who has gone away." The sense is that only that much of deficiency has to be admitted as cannot be avoided; and every little detail that can be done should be done.

Some people have held that the verb 'should be got done' is to be construed with the 'priest'; the meaning being that the sacrificer shall pay to the remaining priests higher fees and get the abandoned work done by them, if he cannot do it himself; but, as before the payment of the final fee, the burden of finishing the performance rests with the sacrificer.—(207)

VERSE CCVIII

IN CONNECTION WITH A RITE, WHEN SPECIFIC FEES ARE PRESCRIBED FOR ITS SEVERAL PARTS,—WILL ONE MAN TAKE ALL THESE, OR SHALL THEY ALL SHARE THEM ?

Bhāṣya.

This verse adds something more in connection with Vedic rites, which is relevant to the present context.

In connection with rites, fees are as a rule prescribed for them as a whole, and not with reference to each priest,—the injunction being in the form 'the fee for it shall be twelve hundred'; this same injunction becomes applicable by 'transference' also to such sacrifices as grow out of, and are analogous to, that in connection with which the fee has been prescribed;—such sacrifices, for instance, as the *Rājasūya* and the rest;—now in connection with these latter, it is found that with reference to certain parts of the rite, distinct specific fees have been prescribed as to be paid to a particular priest specifically,—*e.g.*, 'the bright gold shall be given *to the Adhvaryu*';—these are what are called (in the text) '*specific fees for its several parts.*'

Now the question arises—Is the gift, like the other sacrificial fees, connected with the *Adhvaryu*, only in the sense that he is one among four partners, and it belongs to all the priests, the *Adhvaryu* being only the channel ? or that it belongs to the *Adhvaryu* alone, the others receiving a share only out of the main fee ?

This is the question propounded by the verse.

The term '*pratyaṅgadakṣiṇā*' means *the fees directly prescribed in so many words in connection with special rites as to be given to particular persons.* Or the term '*pratyaṅga*' may mean *for each several part.*

'*Will one man take all these,*'—the gift being connected with the chief priest only,—or shall others all '*share them,*'—

those, equally with the chief priest, having officiated at the performance;—just as they do in the case of the main sacrificial fee?—Such is the sense of the question.

The answer to this is that when a certain fee has been prescribed for a particular person, it is to be taken by him alone; as it is only thus that the prescribed act of 'giving' could be regarded as fulfilled. The mention of the particular recipient in the rule could not be intended to serve any transcendental purpose (and no other purpose could it serve, if the fee were not actually meant to be received by that person alone).—(208)

VERSE CCIX

At Fire-laying, the Adhvaryu shall take the chariot, and the Brahman the horse; or the Hotṛ shall take the horse; and the Udgātṛ shall take the cart at the Soma-purchase.—(209)

Bhāṣya.

At the rite of Fire-laying the *Adhvaryu* shall take the chariot; and the *Brahman* or the *Hotṛ* shall take the swift horse.

In certain rescensional texts, these form the 'sacrificial fee' for the rite of Fire-laying.

At the rite of 'Soma-purchase,' there is a cart, which is to be taken by the *Udgātṛ*. To this cart one calf is yoked, and another unyoked: and it is on this cart that the purchased *Soma* is carried. Others hold that the rites laid down in connection with the 'purchase of Soma' have some transcendental purpose, and their use does not lie only in the obtaining of the *Soma*; *because there is no new character produced in* the *Soma* by its being purchased in the peculiar manner prescribed.

This verse has described how the fees prescribed in connection with the subsidiary details are to be distributed among

the several persons concerned; the next verse is going to describe the rule concerning the distribution of the sacrificial fee prescribed in connection with all rites in general.—(209)

VERSE CCX

FROM AMONG ALL, THE CHIEF MEN SHALL RECEIVE HALF; THE NEXT SHALL RECEIVE HALF OF THAT; THE 'THIRDERS' THE THIRD PART AND THE 'FOURTHERS' THE FOURTH PART OF IT.—(210)

Bhāṣya.

From among the priests, '*the chief ones receive half*'; *i.e.*, they receive half of the fee that is prescribed for the rite as a whole.

At the *Soma-sacrifice* there are sixteen priests; of these the chief ones are four: the *Hotṛ*, the *Adhvaryu*, the *Brahman* and the *Udgātṛ*, and these receive one half of the total fee;—the total fee being *one hundred and twelve*, fifty-six go to these four men.

Half of this, that is *twenty-eight*, go to the '*next*'; *i.e.*, those four whose appointment comes after that of the four mentioned above; *i.e.*, the *Maitrāvaruṇa*, the *Pratiprasthātṛ*, the *Brāhmaṇāchchhaṁsin* and the *Prastotṛ*.

The '*thirders*' receive the '*third part*.'—The term 'part' here is synonymous with 'half'; the term 'half' does not always stand for two equal divisions; it is used also in reference to what is very near such equal divisions; hence the '*third part*' of '*fifty-six*' is understood to be *sixteen*; so that each of these four gets *four*.

Some people take the 'third part' as such that of the total fee; when others take it as that of *fifty-six*.

The four 'thirders' are—the *Achchhāvāka*, associated with the *Hotṛ*, the *Neṣṭṛ* connected with the *Adhvaryu*, the *Agnīd* with the *Brahman*, and the *Pratihartṛ* with the *Udgātṛ*.

The '*Fourthers*'—*i.e.*, so called because they perform the *fourth* part of the rite, and also because they occupy the fourth

place from the *Maitrāvaruṇa*—receive '*the fourth part*'—*i.e.*, *twelve*—of the whole; this number being got at in the same manner as before.

This same method of distribution is to be employed also in the case of the rite of Initiation, where the fee is laid down as 'a hundred'; where also the 'halfers' and 'fourthers' help in the performance.

The practice that we have found prescribed elsewhere we have described in connection with the present text also.—(210)

VERSE CCXI

AMONG MEN CARRYING ON THEIR BUSINESS JOINTLY, THE ALLOTMENT OF SHARES SHOULD BE DONE BY THE APPLICATION OF THESE PRINCIPLES.—(211)

Bhāṣya.

In the sacrificial performance, the man who does the most laborious parts of the work and is employed to do what demands much effort, receives a larger fee, and he who does the easier parts receives less; similarly among ordinary workmen also, those, *e.g.*, employed in the building of houses and temples,—when they do the work 'jointly,' as among the architect, the mason and the carpenter,—their several shares shall be alloted '*by the application of these principles*';—'principle' is *rule* laid down in the *Veda*, hence this phrase means 'according to the rule laid down in the Veda in connection with sacrificial performances.'

Similarly in the producing of a drama, and such other business, the shares are to be alloted among the dancers, the singers and the players of musical instruments.

Even though everyone of the persons concerned may be well versed in the science and quite capable of doing all the work, yet the shares are to be alloted in accordance with the work that is actually done by each, and according to the character of the man concerned.

Thus ends the treatment of 'Joint Concerns.'—(211)

XXXV. Resumption of Gifts

VERSE CCXII

WHEN A MAN GIVES MONEY, FOR A PIOUS PURPOSE, TO ANOTHER WHO ASKS FOR IT,—IF, SUBSEQUENTLY, IT IS NOT USED FOR THAT PURPOSE, THEN, IT SHALL NOT BE GIVEN TO HIM.—(212)

Bhāṣya.

A man comes to the rich man praying—'I am desirous of marrying for the sake of issue,' or 'I wish to perform such and such a sacrifice,' 'give me some money';—and the money is given to him;—but the man does not marry, and spends the money either in gambling or over prostitutes, or for something else, laying it out on interest or agriculture,—then '*it shall not be given to him.*'

When the money has been given already, there can be no sense in forbidding the gift; (A) hence the sentence should be taken to mean that 'it shall be taken back from him.' (B) Or the former clause itself may be taken in a figurative sentence,—the word '*gives*' being taken in the sense of 'promises'; the meaning in this case would be that 'the promised money shall not be given.' In this sense we have the assertion of Gautama (5.23)—'Even after promising, no money shall be given to one who is found to be unrighteous.'

"Of these two explanations (A & B), which is the more reasonable?"

Both are reasonable: the taking back of what has been given, and also not giving what has been promised. In another *Smṛti*-text we find both these courses laid down:—Beginning with the words—'I am going to perform such and such an act,'

the text goes on to say—'what is given in ignorance is as good as not given' (*Nārada*, 4.10-11). This means that when money has been given for a certain act, if that act is not done, the money, even though paid, shall be brought back from the receiver's house; and the opinion of Nārada is that in this case there was only a *promise* of the gift, and its fulfilment would be dependent upon the actual fulfilment of the purpose for which it had been asked for.—(212)

VERSE CCXIII

IF, THROUGH ARROGANCE OR GREED, THE MAN SHOULD SEEK TO RECOVER IT, HE SHOULD BE MADE BY THE KING TO PAY ONE GOLD-PIECE, AS AN EXPIATION FOR THAT THEFT.—(213)

Bhāṣya.

'*Seeking to recover it*'—*i.e.*, filing a suit before the King, with a view to recover it in the manner of a debt;—when, on being asked to pay back what he has already received, the man files an application before the King, saying 'Having given the money to me he seeks to take it away from me'; the 'recovering' of the gift consisting, in this case, of its being *confirmed*.—This is done either '*through arrogance or greed*';—this describes the causes of the action mentioned before.

The penalty for the man who does this act shall be '*one gold-piece*';—'*as an expiation for that theft*';—lest people think that the man, being regarded as a thief, should suffer the penalties prescribed for theft, the author has laid down the penalty as '*one gold piece*.' And yet he has used the word '*theft*' with a view to preclude the notion that the man is not a 'thief,' since what he has taken was given to him and he did not take it away himself. The meaning thus is that, though the man is a 'thief,' yet his punishment, as here laid down, shall consist of 'one gold piece' only, but in all other respects, he is to be treated as a 'thief.'—(213)

VERSE CCXIV

THUS HAS BEEN FULLY EXPLAINED THE LAWFUL NON-MISAPPROPRIATION OF GIFTS; AFTER THIS I AM GOING TO DESCRIBE THE 'NON-MISAPPROPRIATION OF WAGES.'—(214)

Bhāṣya.

The first half sums up the foregoing Head of Dispute, and the second introduces the next head.

'*The non-misappropriation of gifts has been explained.*'—'*Misappropriation*' is non-fulfilment; and it is the negation of this that is expressed by the negative prefix; the sense being that if the gift is resumed in the manner described above, it does not mean its improper 'misappropriation'; such is the rule of all gifts.

'*Lawful*'—not against law.

"When the gift, after being promised, is not paid,—how does this not militate against law?"

Such a question should not be raised. Since the right and lawful course in the case is that it should not be paid, or if paid, it should be taken back.

'*Explained*'—described.

'*Yathāvat,*' '*fully,*'—*i.e.*, in the right manner. The meaning is that 'it has been expounded in the proper manner.' Or the term '*yathā*' may be taken to mean *propriety*; so that '*yathāvat*' would mean *properly*.

'*Wages*'—subsistence-allowance; and the '*non-misappropriation*' of this is going to be described. That is, what I am going to describe now is the behaviour by which there is no improper misappropriation of duty on the part of those who work on wages.—(214)

XXXVI. Non-payment of Wages

VERSE CCXV

IF A HIRELING, WITHOUT BEING ILL, DOES NOT PERFORM THE STIPULATED WORK, THROUGH ARROGANCE,—HE SHOULD BE FINED EIGHT 'KṚṢṆALAS,' AND SHOULD NOT RECEIVE HIS WAGES.—(215)

Bhāṣya

The man who does a stipulated work for a stipulated amount of wages is what is meant by the term '*hireling*' here; *i.e.*, the man who has been engaged to do a certain service, and who has agreed to do it within a definite time, if he is paid 'five rupees' (for instance). If such a person does not finish the work, he should be fined eight '*kṛṣṇalas*'—of gold, or of silver, or of copper, in accordance with the nature of the work and other circumstances; and he should not receive the said *rupees*, which had been fixed as his wages.

But this applies to a case where the man is not ill, and omits to do the stipulated work, '*through arrogance.*' That is, the fine and the loss of wages are to be inflicted only upon the man who is not suffering from any illness, and who omits to do the work through sheer arrogance; so that it is notopen to the man to retort—'Pay me an amount commensurate with the labour already incurred by me.'

Some people hold that this same penalty is to be inflicted upon priests who leave off their work at their own will.

But this is not right; in the case of a sacrificial performance, the loss to the sacrificer, caused by the rites being only

half-done, is very great, so that the penalty in this case should also be heavy; all that the sacrificer has lost should be made good, and the man should also compensate for the physical suffering involved in the sacrificer having to repeat the preliminary rites of the '*Dīkṣā*,' the '*Upasad*' and the '*Dēvavrata*.'

In a case where a mechanic approaches the rich man and urges him to undertake the digging of a tank, or the building of a temple, with the promise that he would supervise the work and see that it is completed, but subsequently slips off, then he should make good all the loss of money and energy that his employer may have suffered; and thus according to the law of the 'trader and the carrier,' this law has been propounded by Kātyāyana as being applicable to all cases: in his *Sūtra*, he says—'If, through the fault of the carrier, the trader suffers some loss, it shall be borne by the carrier,—and so also the man who, having urged a man to invest his money on some undertaking, slinks off, after the work has been only half-done.' Here '*investing*' means *applying the money to the work*; and one who makes the man do this, should make good the loss; such is the sense of the passage.

The law laid down in the verse applies to the person who is engaged on fooding only, for six months, or one year, to do a specified work. Says Nārada—'If a man does not do the stipulated work, he should be forced to receive his wages and do it; if he receives the wages, but does not do the work, he should suffer double the amount received in wages; if he abandons the work before the end of the stipulated time, he deserves to lose his wages.'—(215)

VERSE CCXVI

BUT IF HE IS ILL AND ON RECOVERING, COMPLETES THE WORK AS ORIGINALLY STIPULATED, HE SHALL RECEIVE HIS WAGES FOR IT, EVEN AFTER A LONG TIME.—(216)

Bhāṣya.

Forfeiture of the wages has been declared to be the penalty for the man when not ill; the present verse lays down the law regarding one who is ill.

If the labourer falls ill and gives up work after it has been half-done,—but, on recovering, comes back and completes the task as originally stipulated,—in this case, even though he may have taken a long time to recover from illness and return to work, the man shall receive his wages, on having completed the work.—(216).

VERSE CCXVII

WHEN A MAN, SICK OR WELL, DOES NOT GET THE STIPULATED WORK DONE, HE SHALL NOT RECEIVE HIS WAGES,—EVEN THOUGH THE WORK BE ONLY SLIGHTLY INCOMPLETE.—(217)

Bhāṣya.

If the employer does not dismiss the man, when he has fallen ill, after having paid off his wages for the part of the work done,—then he should, after recovery, be made to finish the work. But if the employer should say—'I have no work for you,' then he should receive his wages in accordance with the part of the work that he may have done.—(217)

VERSE CCXVIII

THUS HAS THE ENTIRE LAW BEARING UPON THE ACTION OF 'NON-PAYMENT OF WAGES' BEEN EXPLAINED. AFTER THIS I AM GOING TO EXPOUND THE LAW RELATING TO CONTRACT-BREAKERS.—(218)

Bhāṣya.

The term '*vētanādānakarmaṇaḥ*' '*the action of non-payment of wages*,' only names the particular *Head of Dispute*; hence there is no room for any such objection as the following—"How is it that the text speaks of having dealt with the *action of non-payment of wages*,—when the *action* of *payment* also has been dealt with?"—Because there is nothing wrong in the *naming* of a subject in accordance with anything that may be related to it; and every little detail does not necessarily enter into its name. For instance, in the *Agnihotra-rites*, even though libations are actually offered to both *Agni and Prajāpati*, it is called '*Agnihotra*,' 'offering to Agni'; and similarly in the case of all such names as '*Sthūṇā*,' '*Darsha' and so forth?*

'*Contract*' is *agreement*, the stipulation or promise, in the form—'I shall certainly do such and such a thing, exactly in the manner in which you wish.' The '*breakers*' of this are those who go against it.

What is referred to here is what has been mentioned above (under the Heads of Dispute) as 'Breach of Contract?'

The first half of the verse sums up the foregoing section and the latter introduces the next.—(218)

XXXVII. Breach of Contract

VERSE CCXIX

IF A MAN, AFTER HAVING ENTERED INTO A COMPACT UNDER OATH WITH A VILLAGE, A COUNTRY OR A CONFEDERATION, SHOULD BREAK IT, THROUGH GREED,—HIM THE KING SHALL BANISH FROM HIS KINGDOM.—(219)

Bhāṣya.

'*Village*'—is a group of households; and the term here stands for the *inhabitants* of the village; as it is only among *men* that there can be a compact. Similarly '*country*' is a group of villages.

'*Confederation*'—a combination formed by persons professing the same faith or path, even though inhabiting different countries and belonging to different castes. For instance, there is the 'confederation of mendicants,' the 'confederation of traders,' the 'confederation of persons learned in the Vedas,' and so forth.

There are several kinds of business is which inhabitants of villages, etc., make a combination among themselves. For instance—'our village is being encroached upon by the inhabitants of another village,—very frequently they graze their cattle on our pasture-lands,—they cut our embankments and carry away water,—if you be all agreed, then we shall prevent their doing all this,—and when we prevent them, it is possible that we may come to blows, or may have to appear before the court;—if we remain combined in all this, then we shall go forward to prevent the encroachment; otherwise we shall let it be.' On this compact being proposed, men may agree to it,

saying—'yes; why should the ancient privileges of our village be trespassed by them?' Now, after having thus entered the compact and encouraged it, if some one were to shirk away and make common cause with the other party, and become lukewarm towards his own neighbours,—such a person should be banished by the king from his kingdom; *i.e.*, he should not be allowed to live there any longer.

Similarly, in regard to the business of tradespeople or Brāhmaṇas and others, when once a man has entered into a compact, he should not break it.

The penalty here laid down pertains to the breach of compacts relating to such work as is of public utility, in due accordance with law and custom, and not detrimental to the interests of the city and kingdom at large.

'*Through greed*';—'*greed*' here stands for succumbing to one's own selfish interests as served by the inhabitants of the rival village.

For cases of such breach, *through ignorance*, there is another remedy.—(219)

VERSE CCXX

HAVING CAUGHT SUCH A BREAKER OF COMPACT, HE SHALL MAKE HIM PAY SIX 'NIṢKAS' OF FOUR 'SUVARṆAS' EACH, AND ALSO ONE SILVER 'SHATAMĀNA.'—(220)

Bhāṣya.

'*Having caught him,*' *i.e.*, detected and put him under restraint—the king should punish him, without giving him any time.

The 'niṣka of four suvarṇas each'—is that which is made up of four '*suvarṇas.*'

Though under 8-317, the '*niṣka*' has been defined as a measure consisting of four 'suvarṇas,' yet the qualification is added here in view of other definitions of the '*niṣka*' found in other Smṛtis—*e.g.*, one of them describes it as consisting of 'a hundred *suvarṇas.*'

It might be argued that, in as much as the author himself has applied the name '*niṣka*' to four '*suvarṇas*' only, the mere mention of the name in the present text would be enough to show what is meant.

But, since the work is a metrical treatise, the presence of a superfluous epithet cannot be regarded as a defect.

Others have taken the term '*chatuḥsuvarṇa*' as a Bahuvrīhi compound, having the collective force, and hence explained the verse as prescribing *three fines*; the meaning being that the fine is to consist of '*four suvarṇas*,' and '*six niṣkas*'; so that *ten niṣkas* come to be indicated.

But for the purpose of making the compound a *Bahuvrīhi*, it would be necessary to fasten the sense of *possession* on to that of *association*. For mere *association* with 'variegated cows' does not make Devadatta a '*Chitraguḥ*' (which is a Bahuvrīhi compound meaning *possessing variegated cows*).

If the fines are to be taken as *three* distinct ones, then the only construction possible is to take the three as constituting a single penalty.

The penalty here prescribed is alternative to 'banishment' (prescribed in the preceding verse).—(220)

VERSE CCXXI

THIS IS THE LAW OF PUNISHMENT WHICH THE KING SHALL FOLLOW IN THE CASE OF THE BREAKERS OF COMPACTS RELATING TO VILLAGES AND CASTE-FEDERATIONS.—(221)

Bhāṣya.

'*Caste-federations*'—federations of various castes, or of men belonging to the same caste;—those who break compacts relating to these federations.

This verse sums up the section :—(221)

(H) XXXVIII. Rescission of Sale.

VERSE CCXXII

IF, AFTER HAVING BOUGHT OR SOLD ANYTHING, ONE SHOULD REPENT OF IT, HE MAY RETURN OR TAKE BACK THAT THING WITHIN TEN DAYS.—(222)

Bhāṣya.

In the case of goods whereof buying and selling are constantly going on, which do not deteriorate, either in quantity or in quality or in price—such, for instance, as vessels of copper, tin and other metals,—whose value remains constant,—if it has not been brought into use, it can be returned or taken back within ten days.

When such things as fruits and flowers, which cannot last long, have been bought at fairs and such gatherings, the 'repentance' should be at the same moment, or on the same day, or the next.

After that, if the purchaser repents— 'this thing I have bought is of no use to me,'—then he should return it within ten days. Similarly, if the repentance is on the part of the seller—'I have not done well in selling the thing,'—then the buyer should be made to return it to him.

The period here allowed is for the case of persons inhabiting the same place. In the case of parties belonging to different places, the returning must be done at the very time of the purchase.

Some people hold that the rule here laid down pertains to such goods as cattle, land and the like, and not to clothes and such articles.

In another *Smṛti*, a different rule has been laid down in regard to the buying and selling. Nārada says as follows:— 'Having bought a merchandise for a certain price, if one thinks that he has not done well in buying it, he should return it, unharmed, to the seller, on the same day; if he return it on the second day, the buyer should suffer the third part of the price paid; on the third day, he loses the double of the third part, and on the fourth day the thing must remain with the buyer'—(*Nārada* 9. 2-3).

Anything that is laid out for sale is called 'merchandise,' by selling which the seller gets a price, with which he buys something else, and thus makes a living for himself. Such an article is spread out in the market by the trader. Now from the use of this particular term in the text of Nārada, it is clear that something very special is meant; for, otherwise, the text quoted would mean the same thing as the foregoing text—'Having bought a thing at a certain price, etc.' (*Nārada* 9.1).

Now the question arises—What is this something special that is meant?

Our answer is as follows:—The rule laid down by Nārada is meant to be applicable to the case where the article, even after being *bought*, still continues to remain 'merchandise,' in the sense that it is laid out for sale by the tradesman who bought it from a fellow-trader only for selling it on his own account—*i.e.*, in cases of mutual transactions among tradesmen themselves; while the rule propounded by Manu is meant to apply to all other cases. Such is the explanation given by some people.

Now, what is the right view on this point?

In each individual case, one should act according to the nature of the article concerned, or according to local usage. Thus it is that we find such practices as the trying of the pace of a horse, the applying of the goad to the elephant, the discussion of the nature of sales effected and so on.

In the text of Nārada quoted above, the term '*unharmed*' means *not spoilt or destroyed*. In the case of 'deposits' in

the shape of cloths and such things, the depositor receives the value of only that part of it which has been spoilt, and the remnant he takes back all right. While in the case of '*sales*,' even the slightest harm makes the buyer liable to pay the whole price.—(222)

VERSE CCXXIII

BUT AFTER TEN DAYS, HE SHALL NEITHER RETURN NOR TAKE IT BACK; HE WHO TAKES IT BACK, AS WELL AS HE WHO RETURNS IT, SHOULD BE FINED BY THE KING SIX HUNDRED. —(223)

Bhāṣya.

After ten days there can be no 'rescission of the sale.'

If the buyer does repent of the transaction and applies to the king for its rescission, he should be fined six hundred

'*He shall not return it.*'—This prohibition is not put forth with a view to any transcendental result; all that is meant is that such is the established rule,—that after ten days the buyer should not be forced, against his wish, to give up the article, nor should the seller be forced to take it back. So that there is nothing wrong if the returning and taking back are done amicably by mutual understanding.—(223)

VERSE CCXXIV

IF A MAN GIVES A DEFECTIVE DAMSEL, WITHOUT MENTIONING THE DEFECTS, HE SHOULD BE PUNISHED BY THE KING HIMSELF WITH A FINE OF NINETY-SIX 'PAṆAS.'—(224)

Bhāṣya.

When a maiden happens to be defective, but she is not described as being so, to the bridegroom, and is given to him without disclosing her defects,—then, on these becoming known, the king shall punish the giver.

The term '*himself*' is meant to indicate the gravity of the offence.

Such circumstances in connection with the girl as may be detrimental to morality, to progeny, and to capacity in general are to be regarded as her '*defects*'; *e.g.*, such diseases as consumption and the like, loss of virginity and so forth.

The punishment in this case is to be either what is laid down in the present text, or that prescribed above, under 205. —(224)

VERSE CCXXV

IF A MAN, THROUGH MALICE, SPEAKS OF A MAIDEN AS 'NOT A VIRGIN' HE SHOULD RECEIVE THE PUNISHMENT OF ONE HUNDRED, IF UNABLE TO PROVE HER IMPURITY.—(225)

Bhāṣya.

'*Not a virgin*'—*i.e.*, one who has already had sexual intercourse. If a man speaks of a maiden as such, but is unable to prove her guilt, he should be fined one hundred coins.

Others have held the view that, in view of the fact that the penalty prescribed is too small in comparison with the serious nature of the defamation, the text should be taken as referring to the actual utterance of the exact words 'not a virgin;' specially as we cannot get over the significance of the particle '*iti*,' ('*as*');—the sense thus being that the man is to be fined one hundred, only when he actually defames the maiden as a 'non-maiden.'

"What difference does this make?"

The explanation is as follows :—When the man defames the maiden as a 'non-virgin,' if he is asked—'How is she a non-virgin?'—and he replies—'she is immodest, cruel, and prone to using obscene language,—all which is not proper for virgins,'—but cannot prove it, then it is that he is to be fined only one hundred,—*i.e.*, when all that he alleges is the

absence in the girl of such qualities as should be present in all maidens (and does not accuse her of having actually lost her virginity).

Or, the term 'virgin' may be taken as denoting *juniority of age*; and the meaning of the text explained as follows:—When a man is seeking a certain girl in marriage, if some one should come and tell him behind the back of the girl's relations—'that girl is not a maiden, she is too young—or too old,'—then the guardian of the girl complains to the king—'my girl is extremely handsome and this man is maligning her to the prospective bridegroom, because he is himself desirous of having her'; thereupon if the defamer is proved guilty,—as he is, when he is found to have made the allegations when the girl was actually of the right age,—then he is fined 'one hundred.'—(225)

VERSE CCXXVI

THE MARRIAGE-RITUAL TEXTS ARE APPLICABLE TO VIRGINS ONLY, AND NOWHERE AMONG MEN, TO NON-VIRGINS; AND THIS BECAUSE THESE LATTER ARE EXCLUDED FROM RELIGIOUS ACTS.—(226)

Bhāṣya.

'*Pāṇigrahaṇa*' is *marriage, the taking of a wife*; in connection with the ritual of marriage, there are certain *mantra-texts*—such as '*kanyā agnimayakṣata*, etc.' ('the virgin offered a sacrifice to Agni')—which indicate that it is *virgins* alone that can undergo the ceremonies of marriage. In fact, the very *injunction* of marriage itself says—'one should marry a virgin,' and it is this that is reiterated in the *mantra-texts*; and the mere fact of the term 'virgin,' being found in these *mantra-texts* could not be regarded as indicative of the restriction of marriage to *virgins* only; and this for the simple reason that mantra-texts, by their very nature have no injunctive force.

The same idea is further emphasised by means of a negative assertion—'*and nowhere among men, to non-virgins.*'—That is, in no Vedic text is marriage with a *non-virgin* found to be mentioned.

'*Excluded from religious acts.*'—In as much as such girls would not be entitled to help in the performance of the *Agnihotra* and other rites, or in the proper begetting of children, they are not fit for being married.

For this reason, when a man calls a *virgin* a '*non-virgin,*' he should be punished with a heavy fine. This is what is meant by the adding of the present verse after what has been said in the preceding one.—(226)

VERSE CCXXVII

THE MARRIAGE-TEXTS ARE CLEARLY CONDUCIVE TO 'WIFE-HOOD'; AND THESE ARE TO BE RECOGNISED BY THE LEARNED AS COMPLETED AT THE 'SEVENTH-STEP.'—(227)

Bhāṣya.

'*Wife*' is *consort*; and 'wife-hood' is brought about by the *mantras*, which are thus '*conducive to*' it. That is, the sacramental rite called 'marriage' is accomplished by the use of these *mantras*, in the case of the twice-born castes; it is not so in the case of the *shūdra*, in whose case no *mantras* are used; though, barring the *mantras*, all the rest of the procedure is the same. It is in this sense that the *mantras* are indicative of the sacramental rite of 'marriage.'

Of these '*mantras,*' the completion, end, is to be '*recognised,*'—'*at the seventh-step.*' After the 'offering of fried grains,' the bride is made to go round the fire thrice and then move forward seven steps, the words addressed to her beginning with the words '*ēkapadī bhava*' and ending with '*saptapadī bhava,*' and when the '*seventh step*' has been thus taken by the bride, there can be no revoking, either on the part of the bride's father or on that of the bridegroom. So that even

though she be insane, she has to be taken as 'wife,' and cannot be abandoned.

There can be no such 'marriage' of a girl, who has already had sexual intercourse; and in her case even though the entire procedure, up to the 'offering of fried grains' may have been gone through, she does not become a 'wife.' So that in this case, a revoking of the bargain is possible, just as in the case of any other commodity. Just as the performance of the rites of 'fire-laying,' if done by a Shūdra, cannot make the fire '*āhavanīya*' (sacrificial),—or as the performance of the fire-offerings and other details of the marriage-rite does not make it a regular 'marriage,' if the bride happens to be within '*sapiṇḍa-relationship*' to the bride-groom. In fact these cases are regarded as transgressions, as is clearly indicated by the following declaration of Vashiṣṭha:—'By reason of having gone through the rites the man becomes liable to expiation and the bride becomes unfit for being married to any one else.'

"If a man, after having married a girl suffering from a disease conducive to sterility, does not abandon her, what would be the remedy?"

If he has the wish and the capacity, he shall marry another girl; just as in the case of one who has a sharp-tongued wife and whom 'he shall give up at once' (Manu, 9, 81).

In a case where, after she has given birth to a son and the man has set up the fire, the wife happens to be attacked by some wasting disease,—the husband shall not have her superseded; specially as the circumstances under which supersession is permissible have been strictly enumerated (9.77-85). Even then, if some one were to take to another wife, by reason of the unchaste character of his former wife, we could not prevent him.

In brief then, the rule relating to girls is that,—even though in the case of other commodities, there is rescission, by mutual understanding, even after ten days,—there can be no such revoking in the case of girls who have been married. Even in cases where girls are given in return for prices paid,

they are to be treated as other commodity only until marriage has been performed. While in the case of one who is given away in a purely religious spirit, there can be no revoking at all ; so say the texts. Though in such cases also, there is revocation,—as declared by Yājñavalkya (I. 65) 'Even though she has been betrothed, the girl may be taken back if a better bridegroom present himself,'—but only till the 'seventh step' has been taken. Once the 'seventh step' has been taken, the gift cannot be rescinded ; and hence there is no revoking in this case ; just as there is none in the case of such gifts as the cow and the like. When once a cow has been given to a person, the gift cannot be returned and taken back, even by mutual understanding ; because the act of *giving* has been already accomplished at the time that the gift was made. So that when once the gift has been accepted, if it were given again to the original giver,—then this would only be an entirely different act of gift, and not the revoking of the former gift. Similarly in the case where both the bride and the bridegroom are possessed of the requisite qualifications, there can be no rescission (of the betrothal), even before the marriage has been performed. While after the marriage has been performed, there can be no abandonment of even a defective bride. Though if she happens to be one who has already had intercourse, and is therefore not a 'maiden' at all,—she may be abandoned ; since marriage is enjoined as to be done with a '*maiden*.' Marriage stands on the same footing as *using* ; and just as the cloth that has been used and worn cannot be returned to the seller even within ten days, so the maiden also who has been married cannot be abandoned.

This subject we shall deal with again under 9, 47.—(227)

VERSE CCXXVIII

Whenever any person should have repentance in regard to any compact that has been entered into—the king shall bring him to the righteous path, in the manner just described.—(228)

Bhāṣya.

The law relating to rescission within ten days is not restricted to transactions among tradesmen; it is applicable also to compacts relating to wages, interest and other kinds of transaction. The repetition of the pronoun in the phrase '*yasmin yasmin*' indicates that all kinds of transaction are meant to be included.

This is an example of 'extended application.'

When a compact has been entered into, and the work agreed upon has been commenced, then it is that repentance sets in. When a compact has been entered into verbally, the parties should therefore wait for ten days, to see if there is repentance on either side.

In a case however where after money has been borrowed on interest, or a priest has been appointed, and the wages have been paid,—if a quarrel arises in regard to the terms of the compact,—then this case does not come within the rule here laid down;—so say some people; on the ground that what has been done cannot be undone.

This however is not right. It is only when a work has been *completed* that it is regarded as 'done,'—and not only when it *has been begun*; because the past-participial affix in the term 'done' does not connote *commencement* (but *accomplishment*), and there is no ground for rejecting its primary connotation. As for the argument that 'what has been done cannot be undone';—as a matter of fact, even when an act has been *done*, if there is any obstruction in the way of the due appearance of its effects, it is regarded to be as good as 'undone.' For instance, when the food that has been eaten is thrown out.

Even in the case of ordinary things of the world, when they are found to be amenable to the rules laid down in the scriptures, promulgation or revocation must proceed on these same scriptural lines. Hence even though the things may have become accomplished, there may be revocation. Consequently, even after a money-transaction has been completed and the money has been taken home by the borrower, it shall

be brought back, if either party shows signs of repentance. If there has been any deterioration or expenditure, these shall be borne by the party concerned, in accordance with the law laid down in the scriptures. It is for this reason that some people hold that by merely receiving the loan, the borrower becomes liable to a month's interest.

In cases of mortgage also—when things are mortgaged on the understanding that they shall be used for a stipulated time,—the transaction is revoked if there is repentance within ten days. As regards the appointment of priests, it is like the marriage of girls. There can be revocation after ten days only when there had been a compact; but only if there is another scriptural text bearing on this subject.—(228)

XXXIX. Disputes between Owner and Keeper

VERSE CCXXIX

I AM GOING TO EXPOUND FULLY THE TRUE LAW RELATING TO DISPUTES BETWEEN OWNERS AND KEEPERS ARISING FROM TRANSGRESSIONS REGARDING CATTLE.—(229)

Bhāṣya.

In regard to '*cattle*'—such as cows and the like—there may be some '*transgressions*'; and from those may arise '*disputes between their owners and keepers*';—the owner saying—'you have destroyed my cow, give her to me';—on which the keeper retorts—'There was no neglect on my part.'

The '*true law*'—the established rule—that governs such disputes—that '*I am going to describe fully.*'

This summing up of the sense of the entire section is put forth for the purpose of securing the attention of the audience.—(229)

VERSE CCXXX

RESPONSIBILITY FOR THE SAFE KEEPING DURING THE DAY RESTS WITH THE KEEPER, AND DURING THE NIGHT, WITH THE OWNER, IF IN HIS OWN HOUSE; IF OTHERWISE, THE KEEPER SHOULD BE RESPONSIBLE.—(230)

Bhāṣya.

If there arises any neglect regarding the safe keeping of the cattle, '*during the day,*'—such as those going to be described under 232,—'*the responsibility*'—blame—'*rests with the keeper*'; and he has to bear the blame

'*During the night*,' the blame lies with the owner,—if the animals die while tied up;—'*if in his house*,'—if they have been safely penned in the house by the keeper.

'*If otherwise*,'—*i.e.*, if they have not been brought into the house during the night, and have been kept in the pastures,—the blame lies with the keeper.

The meaning is as follows:—During the time that the cattle are under the charge of the keeper, if they graze in the cultivated field of a man, or if they are killed,—the fault lies with the keeper; but if anything happens after they have been made over to the owner, then it lies with this latter.

As the blame is in connection with *non-safety*, the term '*yoga-kṣēma*,' '*safety*,' should be taken as figuratively indicating its opposite; just as the epithet 'beautiful-eyed' is applied to a blind man.—(230)

VERSE CCXXXI

IF THE HIRED CATTLE-KEEPER IS ONE PAID WITH MILK, HE SHALL, WITH THE OWNER'S PERMISSION, MILK THE BEST OUT OF TEN; THIS SHALL BE THE 'WAGES' OF THE KEEPER, IF HE RECEIVES NO OTHER WAGES.—(231)

Bhāṣya.

The author is going to describe the details regarding the '*safe keeping*' (mentioned in the preceding verse).

One who 'keeps' the 'cattle' is the '*cattle-keeper*,' the herdsman. Sometimes he is engaged on fooding and other kinds of wages, and sometimes on milk. Of these he who is '*paid with milk shall milk the best—varām—out of ten*';—or the '*worst*,' '*avarām*,'—the initial 'a' being mixed up with the preceding vowel.

The wages are to be commensurate with the labour involved in the keeping. If the man receives nothing else,—in the shape of subsistence,—he shall take the milk of one

cow. The exact wages, more or less, of the man shall be determined according to this rate. Thus for the work of looking after milch and non-milch cows, heifers, bulls and calves, the owner shall apportion to the keeper sometimes the third, and sometimes the fourth, part of the entire milk-produce.

This verse is meant only to afford some indication of the subject. In fact in each individual case, local custom has got to be followed.

If the herdsman of the village omits to look after the cattle, with the idea of having his wages fixed beforehand, then he shall not milk one of the ten cows, without having obtained the owner's permission.

'*With the owner's permission*';—this has been added for the purpose of precluding the possibility of the keeper taking the milk in lieu of the 'fooding' on which he has been engaged. The meaning is that if he milks the cow without the owner's permission, he shall be punished.

'*This*'—*i.e.*, what has been just mentioned—'*shall be the wages,......if he receive no other wages*'; *i.e.*, this shall be the wages of the keeper engaged 'on milk.'

'*Hired*'—*i.e.*, he who takes up the work of keeping the cattle for the purpose of making a living, and not for acquiring spiritual merit.

Or, the meaning of the verse may be that "if the man, entirely out of his own wish, takes the milk of every tenth cow, he shall be regarded as a thief; but if he has obtained the owner's permission, then it becomes his due 'wages,' and there is nothing wrong."

"But in the case mentioned in the verse also, if the man took the milk without the owner's permission, he would be doing something wrong."

True; but in this case he would be only liable to punishment, and he would not be a 'thief'; while in the other case he would be either a 'thief' or a 'misappropriator of a trust.'

This verse should have gone before; some people read it later on.—(231)

VERSE CCXXXII

THE KEEPER ALONE SHOULD MAKE GOOD WHAT HAS STRAYED, OR BEEN DESTROYED BY WORMS, OR KILLED BY DOGS, OR HAS PERISHED IN AN UNSAFE PLACE,—IF IT WAS LEFT WITHOUT HUMAN AID.—(232)

Bhāṣya.

'*Strayed*'—the cattle that has disappeared from sight, and one does not know where it has gone to.

'*Destroyed by worms*';—Worms called '*ārshaka*' enter through the genital ogans of the cow and kill it.

'*Killed by dogs*';—this is mentioned only by way of illustration; so that the same rule applies to the case of cattle being killed by jackals, tigers and other wild animals.

'*In an unsafe place*';—such as holes, pits, stony places and so forth.

All this '*the keeper shall make good.*'—'*if it has been left without human aid.*'—The 'human aid' in such cases would consist in remaining near the cattle and lighting the stick for keeping away wolves and other animals; and when they are left without all this care. In a case where the man, himself on the point of death, is unable to scare away the tiger—or where if the cattle, running fast, happen to fall into a pit, from which it could not be turned back by the keeper, even when he would be following it,—no fault can lie with the keeper.—(232)

VERSE CCXXXIII

BUT THE KEEPER SHALL NOT HAVE TO MAKE GOOD WHAT HAS BEEN TAKEN AWAY BY THIEVES OPENLY,—IF HE INFORMS HIS OWN MASTER OF IT AT THE PROPER PLACE AND TIME. —(233)

Bhāṣya.

'*Openly*'—publicly, with beat of drums;—when the cattle is thus taken away by thieves, the keeper is not made to pay for it. The term 'openly' is meant to indicate the helplessness of the keeper; the sense being that in a case where there are a large number of thieves, and they have taken away the cattle by force,—the keeper is let off; specially if he '*at the proper time*—*i.e.*, immediately—informs the master,—'*at the proper place*'—*i.e.*, wherever the master may happen to be.

"But how could the man know whether the master was on the spot or at his house?"

There is no force in this; even in a case where the master is not on the spot, some substitute of his is bound to be there, who would inform the king or his officer and would have the thieves pursued.

'*His own*';—this has been added for the purpose of precluding the possibility of the information being given directly to the king. The keeper's own master could make every effort to recover his property—on being informed by the keeper;—not so the king;—and further, it would be extremely difficult for the keeper to convey any information to the king directly.

If the keeper gives the information after the thieves have gone away after taking the cattle,—the blame would lie with him.—(233)

VERSE CCXXXIV

ON THE DEATH OF THE ANIMALS, HE SHALL MAKE OVER TO THE OWNER THEIR EARS, SKIN, TAIL-HAIRS, BLADDER AND TENDONS AND THE CONCRETE BILE, AND ALSO POINT OUT THEIR MARKS.—(234)

Bhāṣya.

When, on the expiry of their lives, the animals have died, the ears and other limbs should be made over to the owner.

The '*concrete bile*' is a powder obtained from the horns of cows.

'*Bladder*'—is a particular part of the body.

'*Marks*'—such as 'cleft ears' and the like, which serve to distinguish the animals;—these should be pointed out.

In this manner, does the keeper become absolved from blame.

By seeing the marks the particular animal becomes identified.—(234)

VERSE CCXXXV

WHEN GOATS AND SHEEP HAVE BEEN SURROUNDED BY WOLVES, AND THE KEEPER DOES NOT COME FORWARD,—IF THE WOLF FORCIBLY KILL ANY, THE BLAME SHALL LIE WITH THE KEEPER.—(235)

Bhāṣya.

'*Goats and Sheep*,'—'Sheep' also includes the wild goat. When these have been '*surrounded by wolves*'—jackals and the rest—and they are not killed outright at the very first onset,—so that there is time to come forward and rescue the animals,—and yet '*the keeper does not come forward*'—to rescue them; under such circumstances, if the wolf should '*forcibly kill any*,'—the blame lies with the keeper. That is, he should be made to make it good to the owner, and also perform an expiatory rite.

Cows are large animals, and hence cannot be 'surrounded' by jackals, etc.; hence the present verse has specified '*goats and sheep*'; it does not follow that the rule applies to these animals only; so that this same rule applies to the case of young calves also.—(235)

VERSE CCXXXVI

When however, they are grazing together in the forest, duly protected,—if a wolf pounces upon one and kills it,—the keeper is not to blame.—(236)

Bhāṣya.

In the preceding verse the dual number in '*ajāvikē*' ('goats and sheep') is based upon the fact that *two* kinds of animals are meant; though in reality, being a copulative compound of the names of 'animals,' it should have taken the singular ending. In the present verse we have the feminine plural, in consideration of the individual animals concerned.

'*Duly protected*,' '*together*';—kept together, flocked in one place; having their movements hitherto duly checked;—while grazing in the forest, before the eyes of the keeper;—if a wolf should suddenly emerge out of a thicket and pounce upon and kill one of them;—in this case the keeper is not to be blamed. Because it is absolutely impossible for a man to shut out every little opening in the forest, consisting as it does of endless trees and thickets and creepers; and wolves are always on the lookout for such openings.

The addition of the term '*together*' shows that if they are allowed to roam about long distances, then if any is killed, the blame does lie with the keeper. The animals are in the hands of the keeper; so that if they come to harm through his carelessness, it should be made good by the keeper himself. It is for the purpose of making this simple fact easily understood that the author has had recourse to these detailed assertions.—(236)

VERSE CCXXXVII

Around the village there should be a pasture-ground, four hundred 'bows' or three 'stick-throws' (in width); but three times that space around the town.—(237)

Bhāṣya.

The 'bow' is four cubits in length; four hundred such 'bows.'

'*Around*'—on the four sides, '*of the village,*'—the '*pasture-ground*' shall be reserved; that is, this much of space should be left uncultivated, for the roaming about of cattle.

'*Shamyā*' is a stick; this should be thrown with great force; and from the point where it falls, it should be thrown again; and when this has been done three times, that shall represent the size of the pasture-ground.

'*Three times that around the town*';—the distinction between 'village' and 'town' is well known.

'*Stick-throws*'—*i.e.*, its being thrown, falling on the ground on the momentum being spent up, and so forth.—(237)

VERSE CCXXXVIII

IF THE CATTLE DAMAGE THE UNFENCED CROPS THEREIN, THE KING, IN THAT CASE, SHALL NOT INFLICT PUNISHMENT ON THE CATTLE-KEEPERS.—(238)

Bhāṣya.

As a rule, no crops should be grown on the pasture-lands; since if they have been grown,—why should fences have not been put up? The fault thus lies with the cultivator, and not with the cattle-keepers. The cattle-keeper cannot always be leading each individual animal by the rope; and there is no other grazing ground for the cattle.—(238)

VERSE CCXXXIX

ONE SHOULD SET UP AN ENCLOSURE THERE WHICH THE CAMEL CANNOT SEE, AND SHUT UP EVERY OPENING THROUGH WHICH THE HEAD OF A DOG OR A BOAR COULD BE THRUST.—(239)

Bhāṣya.

'*Enclosure*'—is the name given to a fencing of thorns and twigs that is put up round fields and gardens for the preventing of the entrance of cattle; in some places this is called '*parṇikā*.'

The height of this enclosure should be such that the camel shall not look over it.

"Is the accusative ending in '*yām*,' '*which*,' used in the sense of the Instrumental?" Our answer is—*no.*

"How then would be the camel not see the *enclosure*?"

If it is very high, its other side being not visible, the enclosure is as good as *not seen.*

All the openings should also be closed,—such openings as can be entered by the head of the dog or the hog; *i.e,* the gaps that may be of the size of the head of these animals: the sense is that every effort should be made so that their head *may not be thrust in.*—(239)

After the enclosure has been set up—

VERSE CCXL

If cattle attended by the keeper be found in an enclosed field, on the road-side or near the village, the keeper should be fined a hundred; but cattle without a keeper shall be driven off.—(240)

Bhāṣya.

'*In an enclosed field, either on the road-side, or near the village,*'—within the pasture-ground;—the term '*anta*' means *near*;—if the cattle should eat the crops,—and the keeper be on the spot,—then he should '*be fined a hundred*'; since no fine could be imposed upon the cattle; so also when the keeper is close by, if he is too much engrossed in his family-affairs, and does not send any hired person to see to the cattle.

'*Cattle without a keeper*' should be '*driven off*' with a stick or some such thing; and they shall not be punished. '*Cattle without a keeper*' that are meant here are such calves as have been set free in connection with certain religious rites. (These belong to no one). In the case of other cattle roaming about without a keeper, punishment shall be inflicted upon the owner.

Or, we may read '*aparivṛtā*,' '*unenclosed*,' '*unfenced*,' *for* '*parivṛtā*,' '*enclosed*,' and '*sapāla*' may be taken as standing for '*the owner along with the keeper*,'—the compound '*sapāla*' meaning a party other than the one denoted by the terms of the compound, *i.e.*, *one along with the keeper*—and the question arising 'who is to be punished in this case?'—the answer is that both the owner of the field and the keeper of the cattle should be punished;—the owner being punished for the fault of having cultivated the field near the road-side and not fencing it; if it had been fenced, how could the crops have been eaten?

'*Cattle without a keeper*'—which may have strayed from the herd—should be driven off. Says Gautama (12.21)—'When there is an unfenced field on the road-side, punishment shall be inflicted on the keeper and on the cultivator of the field.'—(240)

VERSE CCXLI

IN THE CASE OF OTHER FIELDS, THE CATTLE-KEEPER SHOULD BE FINED A 'PAṆA' AND A QUARTER; AND IN ALL CASES THE CROP SHALL BE MADE GOOD TO THE OWNER OF THE FIELD; SUCH IS THE ESTABLISHED RULE.—(241)

Bhāṣya.

In the case of '*other fields*'—*i.e.*, other than those on the road-side or near the village;—if the crops are eaten, the fine shall be a '*paṇa and a quarter*.'

"The fine should be a small one, in the case of a field close by, as compared to that in the case of one that can be

reached after traversing a long distance, or which is situated outside the village. In the latter case the punishment should be heavy. For in this case there can be no excuse for the cattle being allowed to enter the field."

There is no force in this; if a heavy fine were not inflicted in the case of fields close by, then every day, when the cattle would be going out or coming in, they would destroy all the fields near the village; while if there is a heavy fine imposed, people would be afraid of it and would take special care to keep them away. In the case of remoter fields, it is only seldom that cattle are taken to graze so far for the sake of some particular kind of grass; hence only a slight fine has been prescribed in this case.

In the case of these fields also, cattle without a keeper should be driven off.

In all cases the loss to the owner of the field has to be made good, the exact amount being determined by experts.

'*Kṣētrika*' is *one who has possession of the field*; the word being formed with the affix '*ṭhak*,' the original term '*kṣetra*' belonging to the '*vrīhyādi*' group.

'*Such is the established rule*'—laid down on the subject.

The use of the phrase '*in all cases*' indicates that in the case of cattle without a creeper also, the loss has to be made good to the owner of the field by the owner of the cattle.

Though the term '*cattle*,' '*pashu*,' includes all such animals as the buffalo, the goat, the sheep, the camel, the ass and so forth,—yet, on the strength of the words of another *Smṛti*, it is restricted to *cows* only. Gautama (12.24-25) prescribes other fines in the case of animals other than the cow—'In the case of the horse and the buffalo, the fine is to be ten, while in that of goats and sheep two each.'—(241)

VERSE CCXLII

BUT MANU HAS DECLARED THAT NO PUNISHMENT SHALL BE INFLICTED UPON A COW WITHIN TEN DAYS OF ITS CALVING, OR BULLS OR DEDICATED CATTLE,—WHETHER WITH OR WITHOUT KEEPERS.—(242)

Bhāṣya.

The present verse lays down an exception to what has been said above.

Since the text speaks of the '*cow*,' it follows that, in the case of other animals, such as the buffalo and the like, the wrong done is cognisable. The term '*vṛṣāḥ*' stands for *bulls*.

'*Dedicated cattle*,'—such cattle as have been selected by a sacrificer for being used at an impending sacrificial performance. Or the term '*deva*' may stand for the images of Viṣṇu, Shiva or other Gods installed within brick-structures; and such 'cattle' as may have been presented to these 'Gods' would be called '*dedicated cattle*'; as in such cases there would be a relation of possession and possessed between the 'Gods' and the 'cattle.'

What is declared here pertains to such cattle as serve as ornaments of temples; and not to those that are only brought there for the purpose of their milk being offered to the temple. Because in the case of the latter, it is the keepers that offer the milk to the Gods, and hence are the 'owners' of the cattle; so that these have to be regarded as on the same footing as other owners. On the other hand, those that serve as ornaments to the temple have been presented to the temple, and as such come to be regarded as being 'dedicated cattle.'

Some people hold that the term '*vṛṣāḥ*' stands for such bulls as have been let off, in connection with the ceremony of *Vṛṣotsarga*.

Such cattle—whether they be '*with keepers*,' or not belonging to any one and hence '*without keepers*,'—are not to be penalised.—(242)

VERSE CCXLIII

WHEN THERE IS TRANSGRESSION ON THE PART OF THE FARMER HIMSELF, HIS FINE SHALL BE TEN TIMES THE ROYAL SHARE,—HALF OF THAT IN THE CASE OF SERVANTS, IF IT IS UNKNOWN TO THE FARMER.—(243)

Bhāṣya.

If there has been some '*transgression*'—fault—on the part of the farmer himself, in connection with his farm,—such as untimely sowing, sowing of unripe seed, damage to the crops by his own cattle, harvesting before ripening, and so forth,—then the man should be fined ten times the amount of the king's share.

If without the farmer's knowledge, the wrong has been done by the servants employed by him—in the shape of night-watchers and others,—then these servants shall be fined half the aforesaid amount.

The construction is—'*atyayē kṣētriyasya daṇḍaḥ.*'

This has been set forth here in the present context, because it deals with cultivated fields.—(243)

VERSE CCXLIV

THIS IS THE RULE THAT THE RIGHTEOUS KING SHALL OBSERVE, IN THE CASE OF TRANSGRESSIONS BY OWNERS, BY CATTLE AND BY THE KEEPERS.—(244)

Bhāṣya.

This verse is easily intelligible.—(244)

XL. (J) Disputes regarding Boundaries.

VERSE CCXLV

When a dispute regarding boundaries arises between two villages, the king shall settle the boundary during the month of Jyeṣṭha, when the landmarks are distinctly perceptible.—(245)

Bhāṣya.

'*Dispute regarding boundaries*,'—*i.e.*, dispute on account of boundary: the particle '*prati*' being a preposition, governs the accusative, according to Pāṇini 1. 4. 90: specially as the cause of a thing also can be spoken of as its characteristic feature.

'*Boundary*,—the limit of villages, their division, the exact determination of their extent.

'*Shall settle it*'—decide it,—'*during the month of Jyēṣṭha.*'

The text adds the reason why the boundary should be settled during this particular month:—'*when the land-marks are distinctly perceptible.*'—Boundary-marks are going to be described below; such as those consisting of clods of stone or things of that kind, and also thickets of grass and the like. Before the advent of the said month, while grass is growing on all sides, no difference could be perceived between grounds marked by a stone-piece and other grounds. When however, the boundary is marked by a piece of stone, if no grasses are visible, then the boundary is easily determined. Similarly in cases where demarcation has been done by creepers and thickets, the boundary should be settled before the advent of spring; for when trees and creepers are burnt down by

forest-fires during the spring, no distinction could be perceived.

In as much as the text has put forward a reason for settling the dispute during a certain month, it is to be concluded that in a case where the marks are easily perceptible, the king should not wait for any particular month, thereby affording time to the parties concerned. It is only for the purpose of finding the necessary marks that one need wait for any particular month. This is the sole purpose served by the mention of the month of *Jyēṣṭha*.—(245)

VERSE CCXLVI

HE SHALL PLANT BOUNDARY-TREES,—SUCH AS THE NYAGRODHA, THE ASHVATTHA, THE KIMSHUKA, THE SHĀLMALĪ, THE SĀLA AND THE TĀLA,—AS ALSO PLANTS WITH MILKY JUICE. —(246)

Bhāṣya.

'*Pādapa*' is *plant*.—'*Plants with milky-juice*'—such as the *Arka*, the *Udumbara* and the like.

These trees are long-lived; hence they should be planted on boundaries; but never in the midst of the village. If they were planted elsewhere also, they could not be sure indicatives of boundaries.—(246)

VERSE CCXLVII

ALSO THICKETS, BAMBOOS OF VARIOUS KINDS, THE SHAMI-TREE, CREEPERS AND MOUNDS, REEDS AND KUBJAKA THICKETS; TREES SHALL NOT BE OBLITERATED.—(247)

Bhāṣya.

'*Thickets*'—shrubs growing together in a compact form.

'*Bamboos*'—*i.e.*, such trees as the *Casia Fistula* and the like; as there are many varieties of these, the text has added the epithet '*of various kinds*.'

'*Creepers*'—tendrils; those species of grass that have long-extending roots.

'*Mound*'—is an artificial raised grass-plot.

The *Kubjaka* being a '*thicket*' (already mentioned before), it has been specially singled out, on account of its importance.—(247)

VERSE CCXLVIII

TANKS, WATER-RESERVOIRS, PONDS AND FOUNTAINS SHOULD BE BUILT ON BOUNDARY-LINES; AS ALSO TEMPLES.—(248)

Bhāṣya.

'*Tanks*'—large reservoirs of water.

'*Ponds*'—pools.

'*Water-reservoirs*'—wells and the like.

'*Fountains*'—plots of ground from which small quantities of water trickle out.

'*Temples*'—houses for the worshipping of *Yakṣas* and other demi-gods.

All these are such marks as are publicly visible; and cannot be easily obliterated; specially as the destroying of these entails a great sin; and further, since all men desiring to fetch water, and to visit the deity in the temple, are constantly on the spot, the boundary-line becomes well known to witnesses.—(248)

VERSE CCXLIX.

HE SHALL ALSO SET UP HIDDEN BOUNDARY-MARKS,—SEEING THAT IN THE WORLD THERE ARE CONSTANT TRESPASSES, DUE TO THE IGNORANCE OF BOUNDARIES AMONG MEN.—(249)

Bhāṣya.

'*Other hidden marks*'—such as dry cowdung and the like. These the king shall set up when he is planning out new villages.

In this manner, the boundary is never obliterated; otherwise outward marks might become obliterated by some cultivator ploughing the plot.—(249)

VERSE CCL

AS ALSO, STONES, BONES, COW'S HAIR, CHAFF, ASHES, POTSHERDS, DRY COWDUNG, BRICKS, CINDERS, PEBBLES, AND SAND.—(250)

Bhāṣya.

'*Karīṣa*'—dry cowdung.

'*Cinders*'—pieces of wood half-burnt.

'*Stones*' and '*pebbles*'—hardened pieces of clay.

'*Potsherds*'—pieces of broken jars.—(250)

VERSE CCLI

OTHER SUCH-LIKE THINGS WHICH THE EARTH MAY NOT EAT UP IN TIME,—THESE HE SHALL SECRETLY SET UP ON JUNCTIONS OF BOUNDARIES.—(251)

Bhāṣya.

The '*thicket*' and other things have been mentioned only by way of illustration; and not for the purpose of excluding other things; since such trees as the *Khadira*, the *Sāra*, the *Kālāñjana* and so forth,—as also things similar to the '*pebble*'—are also used.

The text adds what is meant by '*such-like*'—'*which the earth may not eatup in time.*' '*Eating-up*' is used figuratively, for *corroding*. Just as what has been *eaten up* cannot be differentiated from other things, so also what has become obliterated by the corrosion of the earth.—(251)

VERSE CCLII

By these signs shall the king determine the boundary between two contending parties; as also by long-continued possession and by flowing streams of water.—(252)

Bhāṣya.

When there is a dispute between two persons, inhabitants of two villages, the boundary is ascertained by means of the above-mentioned marks.

'*Long-continued possession*';—*i.e.*, possession whose beginning cannot be traced, and not only 'possession' for *three generations*; the validity of the latter having been rejected above, under verse 149; and also because the boundary of a village being public property, it is quite possible for encroachments being ignored for three generations. Some people read verse 149 without the mention of 'boundary'; according to these, the validity of 'possession' as a proof is established in all cases; and yet it has had to be reiterated here, because, in view of the enumeration of the proofs of boundary, it might be thought that 'possession' is not a proof at all.

"What is the *stream of water* that is mentioned as an indication of the boundary?"

Just as in the case of new settlements, other various boundary-marks are set up, in the same manner, a flowing water-canal also should be built.

Or, the meaning may be that when a stream of water divides two villages, if, in one part of the village, that stream of water is found to be recognised, as the boundary, and there is dispute in another part,—in this case, the stream should be accepted as the indicative of the true boundary in the latter case also. Or, this may be taken as referring to a very large village; the sense being that when a village is located on one side of a river, it cannot be open to any inhabitant of the other bank to assert that he has his lands in the village on the

opposite side also. Or, the meaning may be that even when a certain part of a village has been cut off by a running stream, that same stream shall continue to serve as the boundary between the two villages,—provided that the portion cut off is a small one.—(252)

VERSE CCLIII

IF, EVEN ON THE INSPECTION OF THE MARKS, THERE SHOULD BE A DOUBT, THE SETTLEMENT OF THE DISPUTE REGARDING BOUNDARIES SHALL BE ENTIRELY DEPENDENT UPON WITNESSES.—(253)

Bhāṣya.

"How can there be a doubt, when the marks are there?"

If some one were to come and secretly remove the hidden marks to another place, this would give rise to uncertainty. And as for the open public marks—in the shape of the *Nyagrodha* and other trees,—it is not that these trees are to be found on boundaries only; as a matter of fact, they grow in other places also. It is for these reasons that the said marks are not always reliable, and hence doubts are likely to arise.

In a case where there is no possibility of such invalidating circumstances, the marks themselves are sufficient proof.

'*Dependent upon witnesses*,'—*i.e.*, due to witnesses. The settlement, ascertainment, is such as has the witnesses alone for its basis. The meaning of the verse is that in cases where the marks are doubtful, or where there are no marks at all, the dispute regarding boundaries can be settled only by oral testimony.—(253).

VERSE CCLIV

WITNESSES REGARDING BOUNDARIES SHALL BE QUESTIONED IN REGARD TO THE BOUNDARY-MARKS, IN THE PRESENCE OF AN ASSEMBLY OF VILLAGERS AND ALSO OF THE TWO CONTENDING PARTIES.—(254)

Bhāṣya.

Though a village contains innumerable inhabitants, yet, as a rule, only two men—one from each of the two villages—become parties to a boundary-dispute; and it is in the presence of these two men, as also in that of '*an assembly of villagers*,'—*i.e.*, a concourse of the inhabitants of the two villages,—that '*witnesses regarding boundaries should be questioned.*' At the time that witnesses are being examined, all the villagers should be present as interested in the case; and it is not open to either of the two persons to say—'the dispute is between us two persons, why should these men remain here?'

Or, the meaning may be, that, when a few very old inhabitants of the neighbouring villages have been called as witnesses, it is necessary that other inhabitants also of those villages should be present; since the latter would have heard of the exact boundaries from the older people, so that, if examined in their presence, the witnesses would not lie.

'*Boundary-marks.*'—When there are marks in support of the contention of both parties, the decision is to be arrived at with the help of the deposition of witnesses. And in cases where there are no marks at all, the witnesses are questioned regarding the boundary itself.—(254)

VERSE CCLV

THE OPINION THAT, ON BEING QUESTIONED, THEY UNANIMOUSLY DECLARE IN REGARD TO THE BOUNDARY,—ACCORDING TO THAT HE SHALL LAY DOWN THE BOUNDARY, RECORDING ALSO THE NAMES OF THEM ALL.—(255)

Bhāṣya.

When the witnesses declare an opinion '*unanimously*'—all together; and there is no difference of opinion among them.

In the case of a difference of opinion, the opinion of a majority of them should be accepted.

'*Lay down*'—write down upon a piece of paper;—as also the names of the witnesses.—(255).

VERSE CCLVI

Placing earth upon their heads, wearing garlands and red clothes, and being sworn by their respective meritorious deeds, they shall decide honestly.—(256)

Bhāṣya.

On their heads the witnesses shall place '*earth*'—*i.e.*, clods of earth.

'*Wearing garlands*'—wearing chaplets as far as possible of red flowers.

'*Wearing red clothes*'—dressed in red. Though the root '*rañji*' (from which the term '*rakta*' is derived) denotes only *colouring*, *i.e.*, imparting some colour to what is white, yet it is generally used in the sense of *red*; as we find in such expressions as 'the *rakta* cow' (where the *red* cow is meant).

All this is meant to strike terror in the minds of the witnesses; and also people dressed in red are supposed to be clean.

In swearing, each man should be made to pronounce the words—'whatever merit I may have acquired by my deeds, may all that become futile!'

'*Respective*'—'*svaiḥ svaiḥ*';—the repetition is meant to convey the idea that each of them should mention his 'meritorious deeds,'—such as the giving away of a daughter, bathing in sacred places, and so forth.

'*Samañjasam*,' '*honestly*,' is an adverb. The meaning is that they shall decide the case in a way that may be in accordance with truth, straightforward and righteous. The term '*samañjasa*' is synonymous with 'honest' and 'clear'; and as a 'truthful act' is always 'clear' the text has used the term '*samañjasam*.'—(256).

VERSE CCLVII

IF THEY DECIDE IN THE RIGHT MANNER, THEY, BEING TRUTHFUL WITNESSES, BECOME PURIFIED; BUT IF THEY DECIDE CONTRARIWISE, THEY SHOULD BE MADE TO PAY A FINE OF TWO HUNDRED.—(257)

Bhāṣya.

If, on reference to other proofs and to other more reliable witnesses, it is found that the witnesses have not deposed truthfully, each of them shall be fined two huudred; because each of them is a 'witness' and that penalty has been prescribed for the 'witness'; and all the witnesses do not depose collectively.

'*Truthful witnesses*';—*i.e.*, witnesses who lay a great stress upon veracity.

'*Become purified*';—*i.e.*, do not incur the guilt of telling a lie.

'*In the right manner*';—*i.e.*, in accordance with facts. This phrase cannot be taken as referring to anything that has been *said* (which is what the term '*ukta*' actually denotes); all that is meant is that what they declare is corroborated by other proofs. Or, it may mean 'in accordance with what has been declared in the scriptures,' in the way of truthfulness. It has been declared in the scriptures that 'one shall speak the truth'; hence the phrase '*yathoktēna*' means *in a truthful manner*.—(257)

VERSE CCLVIII

IN THE ABSENCE OF WITNESSES FOUR HONEST INHABITANTS OF NEIGHBOURING VILLAGES SHALL MAKE THE DETERMINATION OF THE BOUNDARY, IN THE PRESENCE OF THE KING.—(258)

Bhāṣya.

Inhabitants of neighbouring villages should be questioned, and decision should be arrived at with the help of what they say.

'*Honest*,'—*i.e.*, possessing the qualifications of the 'witness' as laid down in the texts.

'*In the presence of the king.*'—This has been added for the purpose of filling up the metre; as neighbours never volunteer to decide disputes, in the manner of kings.—(258)

VERSE CCLIX

IN THE ABSENCE OF SUCH ORIGINAL INHABITANTS OF NEIGHBOURING VILLAGES AS COULD BE WITNESSES IN REGARD TO THE BOUNDARY, THE KING MAY EXAMINE THESE (FOLLOWING) FREQUENTERS OF FORESTS ALSO.—(259)

Bhāṣya.

'*Original inhabitants.*'—The epithet has been added with a view to indicate their importance. Those persons who were living in the village at the time of its foundation, and who are co-eval with it, are called 'original'; such inhabitants of the neighbouring villages remain on the spot constantly. There would be 'absence' of these, on account of their having become dispersed, for some reason or the other.

What is the remedy, if these are not available?

In that case the king shall question '*these*'—the persons going to be mentioned in the next verse.

Or, '*maulāḥ*' may be taken to mean 'experienced.'—'*Sāmantāḥ*,' as explained above. And the meaning may be—'In the absence of experienced people, ordinary neighbours may be regarded as reliable authority, and in the absence of these latter, the frequenters of forests should be carefully examined.'—(259)

VERSE CCLX

HUNTERS, FOWLERS, COWHERDS, FISHERMEN, ROOT-DIGGERS, SNAKE-CATCHERS, GLEANERS AND OTHER FORESTERS. —(260)

Bhāṣya.

These persons wander about in the forests surrounding villages, without entering the villages themselves, and might know the exact boundaries. Passing by that way, they might have seen some persons cultivating the fields lying within the disputed area, and might have asked them—'what is this village, in which you are cultivating fields?' In this manner, it is quite possible for them to have acquired the required experience.

'*Hunters*';—those who live by hunting; these also come into contact with villages, when pursuing game that has escaped from forests.

Similarly 'fowlers,' who live by bird-catching, roam about all the villages, in search of birds.

'*Cowherds*' roam about in search of particular kinds of fodder for their cattle.

'*Fishermen*,' '*Dāshas*,'—those who live by digging tanks, etc., wander about in search of work.

'*Root-diggers*,'—those who dig up the roots of thick grasses and other plants.

'*Snake-catchers*,'—those who catch serpents, by way of livelihood. These men are likely to visit several places, and thus come into contact with the inhabitants of several villages.

'*Gleaners*';—very poor people who, after wandering about several villages, earn just enough to serve as food for the day.

'*And others*'—who go about searching fruits, flowers, fuel and such things.—(260)

VERSE CCLXI

As they, on being questioned in fairness, declare the marks of boundary-lines between two villages, even so shall the king fix it.—(261)

Bhāṣya.

Construe '*dharmēṇa*,' '*in fairness*,' with '*pṛṣṭāḥ*,' '*questioned*.'

'*Sīmāsandhi*' is to be construed as an appositional compound—that '*sandhi*,' 'line,' which is the '*sīmā*,' 'boundary.' —The 'line' representing the point where two villages meet, and this being what is meant by 'boundary.'

'*Mark*'—indicative.—(261)

VERSE CCLXII

In the case of fields, walls, tanks, gardens and houses, the decision regarding boundary-marks is dependent upon the neighbours.—(262)

Bhāṣya.

'*Garden*'—stands for park-lands, as well as vegetable yards.

The neighbours are the only source of authority for decisions regarding these.

This has been added with a view to preclude the evidence of hunters and others (mentioned in the preceding two verses).

'*Boundary-marks*';—demarcation of boundary, which is done for the indication of the exact boundary.—(262)

VERSE CCLXIII

In the case of men disputing about boundary-marks, if the neighbours depose falsely, all of them should be severally punished by the king with the 'middle amercement.'—(263)

Bhāṣya.

The punishment of the neighbours is to be severer than that laid down above (in 257).

'*Severally.*'—This is a mere reiteration, the law on this point having been already declared before.

The holders of neighbouring fields are sure to know the right boundary; hence if they happen to give false evidence, their punishment should be heavy. As for ordinary neighbours (living in the neighbourhood), it is not necessary that they should be cognisant of the exact boundaries of fields, etc.; hence in their case the fine is to be 'two hundred,' as laid down before (257). Hence in the case of the boundaries between two villages, such persons as may have been seeing it, as also the neighbours, are to be fined 'two hundred' (if they give false evidence).

On the strength of the use of the term 'neighbours' in the present context, some people have held that the penalty should be the same, both in the case of boundaries between villages and that of boundaries between fields. But this view is contrary to all reason, and hence should be ignored.—(263)

VERSE CCLXIV

IF A PERSON, BY INTIMIDATION, APPROPRIATES A HOUSE, A TANK, A GARDEN, OR A FIELD, HE SHALL BE FINED FIVE HUNDRED; BUT ONLY TWO HUNDRED, IF HE DOES IT IN IGNORANCE.—(264)

Bhāṣya.

In the course of dealing with fields, etc., this additional law is here added.

'*Intimidation*'—has been mentioned only as an example of the methods of misappropriation employed; the meaning is that—'if a man knowing the field to belong to another person, takes possession of it, he shall be fined five hundred.'

'Middle amercement' (which is 500) having been already mentioned in the preceding verse, its reiteration here is meant to indicate that the amount shall vary according to the methods of misappropriation. Or it may be, as some people hold, that in the preceding verse, no significance is meant to be attached to the exact number.

The man appropriates another's property by such intimidations as—'I shall file a suit and have him punished by the king,' or 'I shall have him robbed by thieves,' and so forth; and in this case the fine shall be five hundred, while in other cases, it is to be some other form of it.—(264)

VERSE CCLXV

IN THE EVENT OF THE BOUNDARY BEING UNASCERTAINABLE, THE RIGHTEOUS KING SHALL HIMSELF ASSIGN TO THEM THEIR LANDS, ON THE BASIS OF ADVANTAGES. SUCH IS THE ESTABLISHED LAW.—(265)

Bhāṣya.

'*Unascertainable*'—incapable of being determined, on account of there being no marks or witnesses available.

'*The king himself*'—of his own will—'*shall assign*'—make over—'*their lands*'; saying—'this is your land, that is yours.'

'*Righteous*';—this is added with a view to point out that the king shall not show partiality to any party.

'*On the basis of advantages*,'—*i.e.*, according to considerations of common good; *i.e.*, he shall indicate the boundary between the two villages in such a manner as to make the decision equally advantageous to both parties; so that if the field assigned to one party is less in size, it is of better quality, being more fertile.

The ablative ending in '*upakārāt*' has the force of the participial affix; the term standing for the expression '*upakāram apēkṣya*,' 'taking into consideration the advantages.'

Or, the text may mean that, the land may be assigned to one party, being taken away from the other party, whose rights over it are doubtful. In a case where the complaining village is unable to indicate the boundary, while the other party is able to do it, he shall assign the disputed land to the latter. In this way a great benefit would be conferred upon the king himself, as also upon a large number of villages.—(265)

VERSE CCLXVI

THUS HAS THE WHOLE LAW RELATING TO THE DEMARCATION OF BOUNDARIES BEEN PROPOUNDED. AFTER THIS I AM GOING TO EXPOUND THAT RELATING TO VERBAL ASSAULT. —(266)

Bhāṣya.

This verse sums up the preceding section and introduces the next.

Under 8. 6, this head of dispute has been mentioned as 'assault—corporal and verbal' (Hurt and Defamation) ['Hurt' coming first], in the present context, the latter has been taken up first. This alteration of the order of sequence is due to considerations of simplicity: In most cases actual *physical* assault is preceded by *verbal* assault. Further, a copulative compound (as '*daṇḍavāchikē*' of verse 6) denotes only mutual relationship, it lays no stress upon the order in which the terms occur. So that both kinds of 'assault'—*physical* as well as *verbal*—being equally meant, what sort of 'alteration of order of sequence' is there in the present case? This has been fully explained by the author of the *Mahābhāṣya* on Pāṇini, 1.3.10; and it is on the basis of th s theory that the two assaults have been mentioned by means of a compound.—(266)

XLI. Verbal Assault [Abuse and Defamation]

VERSE CCLXVII

On abusing a Brāhmaṇa the Kṣattriya should be fined one hundred; and the Vaishya one hundred and fifty; or two hundred; the Shudra however deserves immolation.—(267)

Bhāṣya.

'*Abusing*' is speaking harshly. In most cases it takes the following forms:—(*a*) Causing pain by addressing foul words;—(*b*) cursing without reason—'O low-born one, may you suffer long';—(*c*) giving false information; *e.g.*, 'your unmarried daughter is pregnant';—(*d*) defamation, attributing to him serious or non-serious offences.

The punishment to be inflicted upon the Kṣattriya and the Vaishya for abusing a Brāhmaṇa is as here laid down. In another *Smṛti* (Yājñavalkya, 2.2.10) however we read—'If a defamation refers to a heinous offence, the penalty shall consist of the middle amercement; while if it refer to a minor offence, it shall be the lowest amercement.'

For the *Shūdra* '*immolation*,'—in the form of beating, cutting off the tongue, actual death, and so forth, to be adjusted in accordance with the exact nature of the abuse. —(267)

VERSE CCLXVIII

For abusing a Kṣattriya, the Brāhmaṇa should be fined fifty; and in the case of a Vaishya, the fine shall be twenty-five; and in that of a Shudra, twelve.—(268)

Bhāṣya.

'*Abusing*' here stands for all sorts of defamation, except the attributing of grievous offences, for which latter other penalties are laid down. The locative ending indicates *occasion.*

The locative in '*vaishyē*' denotes the object.

The punishment for the cases where the Brāhmaṇa is the abuser or the abused has been laid down; for finding out that for the cases of abuse among the Kṣattriya and other castes themselves, we have to look into other *Smṛtis.* Says Gautama for instance—'Whenever there is abusing between the *Brāhmaṇa* and the *Kṣattriya,* or between the *Kṣattriya* and the *Vaishya,* where the *Kṣhattriya* abuses a *Vaishya* he shall be fined fifty; and where the *Vaishya* abuses a *Kṣattriya,* the fine shall be one hundred; similarly for abusing a *Shūdra* the *Kṣattriya* shall be fined twenty-five, and the *Vaishya* fifty.'

In the case of the *Shūdra* abusing a *Shūdra,* the punishment shall depend upon their qualifications, as is going to be detailed below (under 287 *et seq.*).—(268)

VERSE CCLXIX

AMONG TWICE-BORN MEN, WHEN THERE IS OFFENCE AGAINST AN EQUAL, THE FINE IS TWELVE ONLY; IN THE CASE OF UNUTTERABLE ABUSES, IT SHALL BE DOUBLE.—(269)

Bhāṣya.

No significance attaches to the mention of '*twice-born men*';—all that is meant is that in the case of a man causing offence to another equal to himself, the fine shall be twelve. The 'equality' meant here may be on the point of caste, wealth, relations, age, deeds or learning; since nothing is specifically mentioned. If the two men belong to the same caste, but there is difference of wealth, the fine shall be double; if, in addition, there is difference in regard to

relations also, it shall be three times; if one party is superior on all points, while the other has no superiority on any point, it shall be six times.

'*Abuse*'—Defamation.

'*Un-utterable*'—extremely filthy, referring to one's mother, sister, wife and so forth.

The double of the said fine shall be the amount of penalty.

The neuter pronoun used, '*tadēva*,' indicates that this refers to the fine laid down for all cases, and not only to that in reference to equals.

Or, the pronoun '*it*,' '*tat*,' may refer to the 'hundred,' on the ground of the neuter gender, and also on that of 'hundred' having been laid down in the previous verse. According to this, in the case of equals, if the abuse is of the 'unutterable' kind, the fine would be two hundred.

In the former interpretation, for the purpose of justifying the neuter gender of the pronoun, it would be necessary to supply the term '*parimāṇam*,' 'amount,' which does not occur in the text; whereas according to the latter, it is necessary only to take the pronoun as referring to the term 'hundred,' occurring in another verse; and certainly this latter construction, though a remote one, is far more reasonable than the former.—(269)

VERSE CCLXX

If a once-born person insults a twice-born one with gross abuse, he should suffer the cutting off of his tongue; as he is of low origin.—(270)

Bhāṣya.

'*Once-born person*'—the *Shūdra*; if he '*insults*'—abuses —the higher castes—'*with gross abuse*'—harsh words attributing heinous offences,—suffers '*the cutting off of the tongue*.'

'*He is of low origin*'—being born out of the feet of Brahmā. This is the reason given for the special penalty; and it serves also to indicate the same punishment for persons of the reverse cross-breed also; since these latter also are 'of low origin'; specially in view of the declaration that 'there is no fifth caste.'—(270)

VERSE CCLXXI

IF HE MENTIONS THE NAME AND CASTE OF THESE MEN WITH SCORN, A BURNING IRON NAIL TEN INCHES LONG SHALL BE THRUST INTO HIS MOUTH.—(271)

Bhāṣya.

'*Scorn*'—is *disrespect*, a feeling of disdain.

The words being in some such form as—'O wretched Brāhmaṇa, do not touch me'; and so forth.

Similarly with the *name* also.

'*Mention*' means *uttering* the names without the proper honorific title, or accompanied by an affix signifying 'disdain'—('Oh you Devadattaka').

Or '*abhidroha*' may mean *anger*.

'*Should be thurst*'—thrown in.

'*Nail*'—wedge.

'*Burning*'—flaming with fire.

'*Iron*'—made of iron.—(271)

VERSE CCLXXII

IF THROUGH ARROGANCE, HE TEACHES BRĀHMAṆAS THEIR DUTY, THE KING SHALL POUR HEATED OIL INTO HIS MOUTH AND EARS.—(272)

Bhāṣya.

Sometimes *Shūdras*, 'through arrogance' due to a slight knowledge of grammar, address to Brāhmaṇas such advice as—

this is your duty,'—'such is the procedure of this rite'—'do not do it in this manner, you who are learned in the Veda.' And the text lays down the penalty for such *Shūdras*. If however a *Shūdra* has learnt things through his association with Brāhmaṇas, and points out lapses as to proper time and place due to forgetting the details, in a friendly manner, with such words as—'Do not please omit the morning time,' 'fulfil your duties towards the gods,' 'satisfy the gods,' 'wear the cloth over your right shoulder, and not the reverse,'—then there is nothing wrong in this.

'*Heated*'—put into fire and hence painful.

'*Pour*'—make it flow.

"It is right that it should be poured into his mouth, since it is with the mouth that he offers the advice. But what is the fault of the ears?"

Their fault lies in having listened to misguided reasonings (which make him think himself qualified for offering the advice).—(272)

VERSE CCLXXIII

He who, through arrogance, speaks falsely regarding the learning, the habitat, the caste, the occupation, or the bodily details (of another person), should be made to pay a fine of two hundred.—(273)

Bhāṣya.

When, as a matter of fact, a man is really learned, one may say 'this has not been properly learnt by him'; or he may defame his learning by declaring—'what he has learnt is not right.'

With regard to one who regards himself as an inhabitant of Brahmāvarta, he may say 'he is a foreigner.'

With regard to a real Brāhmaṇa, he may say 'he is a Kṣattriya'; or through friendship he may call a *Kṣattriya*, '*Brāhmaṇa*.'

'*Occupation*';—the 'student' may be called 'one who has finished his studies.'

In regard to one's '*bodily details*,' he may say 'he is suffering from skin diseases,' when, in reality, the man has no defects at all.

'*Falsely*';—'*false*' is what is a lie. The instrumental ending being used in accordance with Pāṇini's rule '*Prakṛtyādibhya upasaṅkhyānam*.'

Or '*falsity*' may stand for *unrighteousness*; and it is only right that *unrighteousness* should be regarded as instrumental in defaming other persons.

'*Through arrogance*';—'*arrogance*' stands for *disregard for others*. So that if the assertions in question are made through ignorance, or in joke, there is no harm.

"For whom is this penalty laid down?"

We say—for all castes. Others however hold that, since the context pertains to the *Shūdra*, it must be regarded as meant for the *Shūdra* falsely defaming a twice-born person.—(273)

VERSE CCLXXIV

IF A MAN, EVEN TRULY, CALLS ANOTHER 'ONE-EYED' OR 'LAME' OR SOMETHING ELSE LIKE IT,—HE SHOULD BE MADE TO PAY A FINE OF AT LEAST ONE 'KĀRṢĀPAṆA.'—(274)

Bhāṣya.

'*One-eyed*'—he who is deprived of one of his eyes.

'*Lame*'—who is without one leg.

'*Something else like this*'—*e.g.*, a cripple, flat-nosed and so forth.

'*Even truly*';—the term '*even*' implies the false defamation also, *i.e.*, when one who is not one-eyed is called so.

The fine in this case shall be '*at least one Kārṣāpaṇa*';—*i.e.*, if, through mercy, the lowest fine be meant to be imposed,

a *Kārṣāpaṇa* should be the lowest amount of it. Otherwise, the fine should be two, three, four or five *Kārṣāpaṇas*, according to the character of the accused.

This rule may be taken, as before, as referring to either all men, or to the *Shūdra* only.—(274)

VERSE CCLXXV

He who alienates the mother, the father, the wife, the brother, the child or the preceptor, should be made to pay a hundred; as also one who does not give the way to his preceptor.—(275)

Bhāṣya.

'*Alienating*' means *estranging* (sowing dissension), by false insinuations; *e.g.*, when one tries to sow dissension by making such assertions as—'This mother of yours has no love for you, she has a great hankering after her other son, and has secretly given him a golden ring.' Similarly when he sows dissension between the father and son, or between the husband and wife, or between brothers, or between the preceptor and disciple.

The term '*child*' has been mentioned with a view to indicate the other member in the dissension. If this were not added, the punishment would apply only to one who would alienate the 'mother' from her son,—and not to one who would alienate the 'son' from his mother; though 'alienation' is always between two parties, yet that party is spoken of as being 'alienated' through whom the estrangement is attempted. Under the circumstances, if the 'child' were not mentioned, the punishment would apply only to one who would 'alienate the *mother*' by saying—'this son of yours is not devoted to you, and is ill-behaved,'—and not to one who would 'alienate' the *son*, in the manner described before.

Others have explained the word '*ākṣārayan*' as *causing mental suffering*; by making such statements as—'I am going away from the country for the purpose of acquiring learning or wealth,'—when the fear of the going away of the son causes pain to the father and others; and hence this should not be done.

As regards the 'preceptor,' so long as he is alive, one should not go over to another, specially so long as he does not permit him to do so. In a case where the disciple causes mental suffering to his preceptor, by disrespect and such acts,—the man cannot escape by paying the fine of a hundred only; as 'disregarding of the preceptor' has been held to be a very serious offence.

The '*alienating*' of the loving wife with children is attempted by telling her that her husband is going to marry another woman. Similarly that of the son with excellent qualities, by representing him to be otherwise.

If in any way, one does not give the way to his preceptor, his fine shall be one hundred.—(275)

VERSE CCLXXVI

THE DISCERNING KING SHALL INFLICT THIS PUNISHMENT UPON THE BRĀHMAṆA AND THE KṢATTRIYA: THE BRĀHMAṆA SHALL BE FINED THE LOWEST AMERCEMENT AND THE KṢATTRIYA THE MIDDLEMOST—(276)

Bhāṣya.

The construction of this passage is elliptical:—'In the case of mutual abuse between the Brāhmaṇa and the Kṣattriya, this shall be the punishment.'

Or, the Dative (in '*brāhmāṇakṣattriyābhyāṁ*') may be taken as denoting *purpose*; the sense being—'for the purpose of keeping in check the Brāhmaṇa and the Kṣattriya.'

The punishment here prescribed is to be inflicted when some grievous offence is attributed, and causes pain—(276)

VERSE CCLXXVII

ON THE VAISHYA AND THE SHUDRA ALSO, THE INFLICTING OF PUNISHMENT SHALL BE OF THE SAME KIND, ACCORDING TO THEIR RESPECTIVE CASTES,—BARRING MUTILATION ; SUCH IS THE DECISION.—(277)

Bhāṣya.

'*Of the same kind*'—*i.e.*, the lowest and the middlemost amercements, mentioned in the preceding verse. The order should be as follows :—when the *Vaishya* abuses the *Shūdra*, he shall be fined the lowest amercement, and when the *Shūdra* abuses the *Vaishya*, he shall be fined the middle amercement.

'*The inflicting of the punishment shall be the same, barring mutilation*' ;—This includes the 'cutting off of the tongue' laid down in verse 270.

'*According to their respective castes.*'—This should not be understood to mean that the said fine is to be inflicted when they abuse men *of their own caste* ; the meaning is that the fine shall be in accordance with the castes mentioned. The sense of the verse is that when these men abuse men of their own castes, the punishment shall be as laid down before.

'*Inflicting*'—Promulgating.

When the *Kṣattriya* abuses the *Vaishya*, the fine shall consist of half of the lowest amercement ; the same scale shall apply when the *Brāhmaṇa* abuses the Vaishya and the Shudra.—(277)

VERSE CCLXXVIII

THUS HAS THE LAW RELATING TO PUNISHMENTS IN CONNECTION WITH VERBAL ASSAULTS BEEN TRULY EXPOUNDED ; AFTER THIS I AM GOING TO PROPOUND THE LAW RELATING TO PHYSICAL ASSAULT.—(278)

Bhāṣya.

'*Physical assault*'—Causing suffering by physical hurt; the term '*pāruṣya*' ('*hurt*') has been used in the sense that 'assault' causes pain in the same manner as the thrusting of the thorn does.

'*Law*'—*i.e.*, rules relating to the details of punishment.

This verse serves the purpose of summing up the foregoing section and introducing the next.—(278)

XLII. (K) Assaults

VERSE CCLXXIX

With whatever limb the low-born man hurts a superior person, every such limb of his shall be cut off; this is the teaching of Manu.—(279)

Bhāṣya.

'*Low-born man*'—from the *Shūdra* down to the *Chaṇḍāla.*

'*Superior person*'—belonging to the three higher castes.

If the former hurts the latter with any 'limb,'—either directly, or through the instrumentality of a stick or a sword or some such weapon,—then '*that limb of his shall be cut off.*'

The term '*hiṁsā*' (*hurt*) here stands for *striking in anger, intentionally raising the hand or some weapon and letting it fall upon another,*—and not actually *killing.*

The repetition of the pronoun '*tat tat*' ('every such') is meant to guard against the idea that only *one* limb is to be cut off, which might arise from the use of the singular number in '*aṅgam*' ('limb'). Hence in a case where the hurt is inflicted by several limbs, all these limbs should be cut off.

'*Teaching*'—advice. Such is the law laid down by Manu. This has been added with a view to make a lenient king inflict the severe punishment.—(279)

VERSE CCLXXX

If he raises his hand or a stick, he should have his hand cut off; if he strikes in anger with the foot, his foot shall be cut off.—(280)

Bhāṣya.

If he raises his hand for the purpose of striking, then the hand should be cut off,—even though he may not actually strike.

'*Stick*' stands for anything that hurts in the same manner as the stick does. Hence if he strikes with the soft root of the lily and such things, the punishment shall be less severe.

'*If he strikes with the foot*';—here also *raising* is to be understood.

'Threatening' also is included herein.—(280)

VERSE CCLXXXI

IF A LOW-BORN PERSON TRIES TO OCCUPY THE SAME SEAT WITH HIS SUPERIOR, HE SHOULD BE BRANDED ON THE HIP AND BANISHED; OR THE KING SHALL HAVE HIS BUTTOCKS CUT OFF.—(281)

Bhāṣya.

'*Superior*'—*i.e.*, the Brāhmaṇa, who is always 'superior' by reason of his caste, even though he be 'inferior' on account of his bad character. In the case of the other castes 'superiority' and 'inferiority' are relative and comparative (so that everyone of them may be 'superior' and also 'inferior'). It is for this reason that the text has used the term '*low-born*,' where the term 'born' shows that what is meant is 'inferiority' by *birth*; hence on account of its proximity, the 'superiority' also should be understood to be by *birth*. This superiority by *birth* belongs to the Brāhmaṇa, irrespectively of other considerations, and he is never 'inferior.' From all which it follows that the punishment here laid down is for the *Shūdra* who occupies the same seat with the *Brāhmaṇa*.

'*Hips*,'—buttocks;—'*branded*' upon that. This 'branding' is to be not mere marking with lime or saffron or such things; but it is to be indicative of the man's having undergone the punishment; so that others might fight shy of the same transgression. Hence the marking prescribed is one that is ineffaceable, and should be done with an iron-nail or some such thing; as is going to be laid down below (8.352)—'Punishments that strike terror, etc., etc.'

He should also be '*banished*' from the kingdom.

'*Sphik*' is the name of a part of the buttocks, on both the right and the left side. This he '*shall have cut off*.' In as much as this is an alternative to 'branding,' it is only the part, and not the entire buttock, that is to be cut off.

'*Tries to occupy*';—the man is to be punished not merely for *trying* to do so, but only when he has actually occupied it; because the mere *wish* or *attempt* can be hidden (and hence may not be discovered), and also because the penalty laid down is very severe.—(281)

VERSE CCLXXXII

IF, OUT OF ARROGANCE, HE SPITS, THE KING SHOULD HAVE HIS TWO LIPS CUT OFF; IF HE URINATES, THEN HIS PENIS; AND IF HE BREAKS WIND, HIS ANUS.—(282)

Bhāṣya.

If he sprinkles urine on his superior, or passes urine in his presence, with a view to insult him,—then, even though the urine may not actually touch the man, yet, in as much as he insults his superior with 'urination,' the penis shall be cut off.

This same rule applies to the case of *semen*; as the effect is the same in this case also.

'Spitting' consists in letting the fluid pass out of the nostrils or the mouth. Hence if it is done through the nostrils,

it is the nostrils that have to be cut off; in accordance with what has been said (under 279) regarding the punishment to be inflicted upon that limb with which the offence has been committed.

'*Breaking wind*'—is making an improper sound with the anus.

All this is to be punished, when done '*out of arrogance*,' and not when done by chance.—(282)

VERSE CCLXXXIII

IF HE CATCHES HOLD OF THE HAIR, THE KING SHALL UNHESITATINGLY HAVE HIS HANDS CUT OFF; ALSO IF HE LAYS HOLD OF THE FEET, THE BEARD, THE NECK, OR THE SCROTUM.—(283)

Bhāṣya.

The phrase '*out of arrogance*' of the preceding verse has to be construed with this verse also.

If the *Shūdra* lays hold of the Brāhmaṇa's hair, with a view to insult him, his hands should be cut off. The dual number has been used for the purpose of indicating that even when the catching is done with a single hand, since the pain caused is the same as that in the case of catching with both hands, it is *both* the hands that shall be cut off, and not *one* only.

'*Dāḍhikā*' is *beard*.

In the case of other parts of the body also, the catching of which causes the same pain as the catching of the neck and other limbs mentioned, the punishment shall be the same as the one here laid down.

'*Unhesitatingly*';—this forbids any consideration regarding the exact amount of pain caused by the catching,—whether it has been much or otherwise. The sense is that the punishment is to be inflicted for the mere *catching*.—(283)

VERSE CCLXXXIV

One who bruises the skin should be fined one hundred; as also one who fetches blood; he who cuts the flesh, six 'niṣkas'; and the bone-breaker should be banished.—(284)

Bhāṣya.

What is here laid down pertains to offences committed among the twice-born men themselves, as also between two *Shūdras*.

When one only '*breaks*' or pierces the skin, and fetches no blood, the fine is one hundred.

The same also when blood flows out. Though no blood can flow out unless the skin has been broken, yet the limitation on the fine has been laid down with a view to preclude the idea that since the hurt is more serious, the punishment should be heavier.

Others hold that this has been added in view of the fact that blood flows also out of the ear, the nostrils and such other parts, as also out of the outer skin (and the rule is meant to apply to this latter case).

This however is not right. Because in a case where there is internal hurt, the pain is very severe, and the punishment therefore should be proportionately heavy. Hence what is meant is that the fine of one hundred shall be inflicted in a case where only a small quantity of blood has flown out.

In the case of head-breaking, the punishment shall be the same as that in the case of cutting the flesh.

The term '*niṣka*' here stands for a measure of gold, as has been already explained before.

'*The breaker of bones should be banished,*';—*i.e.*, one who causes the bone to be broken. The compound '*asthibhēdakaḥ*' should be explained by compounding '*asthi*' ('*bone*') with the term '*bhēda*' which ends with the '*ghañ*' affix, and then adding the causal affix in the sense of '*doing*' to the compound thus formed (*i.e.*, '*asthibhēdam karoti iti asthibhēdakaḥ*').

'Banishment' is an alternative to 'Death.' In works dealing with the science of government, in the sections dealing with punishments, we find the latter penalty laid down; for instance, in the works of *Bṛhaspati* and *Ushanas*. So 'banishment' applies to the case of Brāhmaṇas, and 'death' to that of others.—(284)

VERSE CCLXXXV

In the case of all trees, as their usefulness so should be the punishment inflicted for injuring them; this is the settled rule.—(285)

Bhāṣya.

The '*trees*' have been mentioned as representing all immovable things.

'When injury is done to a tree which is of great utility, the fine consists of the 'highest amercement'; when the tree is of ordinary utility, it consists of the 'middle amercement'; and when it is of small utility, it consists of the 'lowest amercement.'

Account has also got to be taken of the part of the tree where the injury is done;—whether it is the leaf, the fruit or the branch that has been cut off. In regard to fruits also, their market-value has to be taken into consideration.

Similarly account has to be taken of the position of the tree,—whether it stands on the boundary, on road-crossings or in a hermitage, and so on.—(285)

VERSE CCLXXXVI

When a hurt has been inflicted on men or animals, with the motive of causing pain, the king shall inflict punishment in proportion to the greatness of the pain caused.—(286)

Bhāṣya.

This verse supplies deails in connection with what has been said before regarding 'the breaker of skin, etc.' (in 284).

If the term '*men*' did not occur, and the verse were taken as referring to any and every living creature, it would give the idea that the same punishment is to be inflicted in the case of the larger as well as the smaller beasts, birds and deer; and it is for the purpose of precluding this idea that the term '*men*' has been added.

'*In proportion to the greatness of the pain caused*';—if the animal hurt is a large one, and the extent of the bruise or the quantity of blood is small, then the hurt being 'small,' the fine shall be less than a hundred; while if the hurt is 'serious,' it may exceed a hundred.

Others have said that the text has added the term 'greatness' for the purpose of indicating that in the case of great pain, the fine shall be increased,—and it does not mean that when the pain caused is not great, the fine shall be decreased.

'*With the motive of causing pain*'—*i.e.*, when the hurt is inflicted with the clear intention of giving pain; hence there is no enhancement of the fine if the hurt has been inflicted by chance carelessness.

These two verses are instances of cases where the attendant circumstances have to be taken into consideration in the apportioning of fines for hurt; and it is in this sense that they should be interpreted.—(286)

VERSE CCLXXXVII

In the case of injury to limbs, as also of strength and of blood,—the man should be made to pay the expenses of recovery, or the whole amount as 'fine.'—(287)

Bhāṣya.

'*Injury to limbs*'—in the shape of the breaking of joints and the like, caused by the stroke of tough ropes and the like. *In such cases* the *man hurt* should *receive from the* assailant the charges in connection with the physician and the medication incurred in obtaining recovery.

A similar construction is to be placed upon the compound word '*prāṇa-shoṇitayoḥ*,' '*of strength and blood*.'

Or in the case of the latter, the construction may be—'*prāṇashoṇitayoḥ samutthānavyayaṁ dāpyaḥ*,' 'he should be made to pay the expenses for the recovery of strength and blood,' *i.e.*, 'when these two have suffered'; this being understood.

'*Prāṇa*' means *strength*; when a man becomes ill in consequence of the hurt received, he has to go without food, and hence becomes emaciated and loses his strength.

In a case where no limb has been seriously injured, the assailant should be made to supply just that quantity of butter and oil and such things as may be needed for the recovery of strength.

Similarly when blood has been fetched, and, as a consequence the man becomes weak, or contracts some disease,—the assailant shall be made to pay the expenses incurred in obtaining a complete cure.

If the man hurt does not accept all this, then the whole amount is to be totalled up and paid to the king as 'fine.' —(287)

VERSE CCLXXXVIII

When a man, either intentionally or unintentionally, damages the goods of another, he shall give satisfaction to him and pay to the king a fine equal to it.—(288)

Bhāṣya.

'*Goods.*'—Household articles,—such as the winnowing basket, the mortar, the jar-platform, the pot and so forth,—or things in connection with which no special punishments have been laid down.

The '*damage*' to these consists in destroying their original shape, even though they still continue to be of use.

'*Intentionally or unintentionally*';—there is no distinction to be made, whether the injury is done by chance, carelessness, or intentionally.

He shall '*give satisfaction*' to the owner of the goods, either by offering to him another article of the same kind, or by paying him the price of the damaged article, or by apologising. And to the king he shall pay the price of that article.

To this rule, there are some exceptions (and these are noted below).—(288)

VERSE CCLXXXIX

IN THE CASE OF LEATHER AND LEATHERN VESSELS, AND IN THAT OF THOSE MADE OF WOOD OR CLAY, THE FINE SHALL BE FIVE TIMES THEIR VALUE; AS ALSO IN THE CASE OF FLOWERS, ROOTS AND FRUITS.—(289)

Bhāṣya.

Between '*charma*' and '*charmika*' we have the copulative compound, and between the compound thus formed and the term '*bhāṇḍa*' we have the Determinate Compound. Or, there is Determinate Compound between '*charma*' and '*charmika*,' and Copulative Compound between the compound thus formed and the term '*bhāṇḍa*.'

'*Leathern*' means *made of leather*; and 'leathern vessels' meant are the leather-bottle and such other articles.

'*Leather*'—stands for the mere *skin* of the cow and other animals, not made into anything.

Or, the term '*leathern vessel*' may stand for such vessels as are made of leather only, while '*leathern vessel*' for those that are only bound up with leather.

Vessels '*made of wood*'—the mortar, the pestle, the board and so forth.

'*Clay*' is a form of earth, *i.e.*, earth hardened into the form of stone; and vessels made of these are the cooking utensils, etc.

In the case of damage done to these '*the fine shall be five times their price*'; and the satisfaction of the owner has of course got to be brought about.—(289)

VERSE CCXC

IN THE CASE OF THE CONVEYANCE, ITS RIDER AND ITS OWNER, THEY LAY DOWN TEN EXCLUSIONS; FOR THE REST PENALTIES ARE PRESCRIBED.—(290)

Bhāṣya.

The present text proceeds to show that in some cases, even though some damage may be done, it is not regarded as an offence.

'*Conveyance*'—the cart and so forth, riding on which people go on a journey. These carts are drawn by bullocks, mules, buffaloes and such animals. These same animals also, when ridden upon, may be taken as meant by the term '*Conveyance.*'

'*Rider*'—the driver and other persons riding in the cart.

'*Owner of the conveyance,*'—the person to whom the conveyance belongs.

By the force of the running wheels of these carts, or by that of the horse or other animals pulling the cart on the

road, some damage or death may be caused; and all such cases would come under the law relating to 'owner and keeper' laid down in verse 229 *et seq.* But in all these, the fault lies sometimes with the rider, sometimes with the owner, sometimes with both, sometimes with no one; and these details not having been dealt with on the previous occasion, they are taken up now.

'*Exclusions*'—*i.e.*, cases where there is no punishment for the injury; and which therefore are not regarded as offences to be penalised.

'*For the rest*';—*i.e.*, for cases other than those just enumerated, penalties are prescribed; and these are now going to be described.—(290)

VERSES CCXCI—CCXCII

WHEN THERE IS SNAPPING OF THE NOSE-STRING, WHEN THE YOKE IS BROKEN, WHEN IT TURNS SIDEWAYS OR BACKWARDS, WHEN THE AXLE BREAKS, AND WHEN THE WHEEL IS BROKEN; (291) WHEN THE FITTINGS OR THE YOKING STRAP OR THE BRIDLE ARE TORN, AND WHEN THERE HAS BEEN THE LOUD CRY 'GET OUT OF THE WAY,'—THERE IS NO PUNISHMENT; SO HAS MANU DECLARED—(292)

Bhāṣya.

The text proceeds to show the cases where there is no offence.

'*Nāsya*' is that which pertains to the nose; the term ending in the affix '*yat*,' which is added because the basic noun '*nāsā*' is the name of a limb of the body. It stands for the string that passes through the nostrils of the bullocks, as also for the *bridle* of the horse, or the *goad* of the elephant—When this has '*snapped.*'

'*When the yoke is broken*';—'yoke' is the name of a piece of wood forming part of the cart. The compound '*chhinnanāsyā*,' taken as *Bahuvrīhi*, refers to the cart or to

the animal, both of these being connected with it, either directly or indirectly.

'*When it turns sideways or backwards*,'—*i.e.*, when the cart so turns. When, either on account of the uneven ground, or by reason of the animal having taken fright, the cart turns either sideways or backwards, and some one happens to be hurt,—there lies no offence. The driver can see and guard against things only in front of him; so that when the cart turns sideways, how can he see and avoid striking against anything that may be there?

'*Turning backwards*' means *turning round*.

Others explain this phrase to mean that no offence lies in a case where the injured party has turned sideways, while the cart is going on its straight course; and '*pratimukha*' they explain as 'in front.' The reason for there being no offence in this case is that it is the fault of the injured person himself why he did not make way for the cart coming in front of himself.

'*Axle*' and '*wheel*' are well known parts of the cart.

'*Fittings*'—the leather thongs with which the wooden parts of the chariot are tied up.

'*Yoking strap*'—the piece of wood on the neck of the animal.

'*Bridle*'—the string with which the movements of the yoked animals are controlled.

'*Loud cry*'—'*get out of the way*'—*i.e.*, move off. When the animals have gone out of hand, if the driver keeps on crying 'get out of the way,' if some one coming by that way happens to be hurt, the fault does not lie with the driver. —(291-292)

VERSES CCXCIII—CCXCIV

WHEN HOWEVER, ON ACCOUNT OF THE DRIVER'S INEPTITUDE, THE CART TURNS OFF AND CAUSES INJURY, THE OWNER SHALL BE PUNISHED WITH A FINE OF TWO HUNDRED.—(293) IF THE DRIVER IS A TRAINED ONE, IT IS HE THAT SHOULD

BE PUNISHED; IF THE DRIVER IS UNTRAINED, ALL THE OCCUPANTS OF THE CART SHOULD BE FINED A HUNDRED EACH.—(294)

Bhāṣya.

'*Driver*'—the man who drives the cart; his '*ineptitude*' consists in his being not trained. What is said here applies to the case where the accident is due to this, and not to want of care; for when the driver is a trained one, the punishment should fall on him, there being no fault on the part of the master.

On account of the said '*ineptitude*,' if the cart suddenly happens to '*turn off*,'—*i.e.*, giving up the right path, swerves off either sideways or backwards,—and should thereby cause some damage, the owner should be fined for having employed an untrained driver.

In view of what is going to be said regarding the case 'when a man is killed' (296), where diverse penalties are prescribed in accordance with the nature of the living being injured or article damaged,—significance cannot be attached to what is said in the present verse regarding the fine being 'two hundred'; all that is meant by the declaration is that the case cited is one calling for punishment; specially as there is nothing else (apart from the specific cases mentioned below) to which the exact amount of fine here laid down may be taken as applicable.—(293 & 294)

VERSE CCXCV

BUT IF HE HAPPENS TO BE STOPPED ON THE ROAD AND CAUSES THE DEATH OF A LIVING BEING, EITHER THROUGH ANIMALS OR THROUGH THE CART,—IN SUCH A CASE THERE IS NO DOUBT REGARDING PUNISHMENT.—(295)

Bhāṣya.

Penalty for causing hurt has been described; the text proceeds to lay down details regarding it.

If '*he*'—the driver—'*happens to be stopped*'—his movement obstructed—'*on the road*'—by some dense mass coming in front of him; while thus placed behind that mass, either on account of carelessness, or by reason of being untrained, he continues to urge forward the animals yoked to his cart, and then suddenly pulls them up,—another cart happens to be close by,—then, by the sudden stoppage of the speed of his cart, he happens to cause the death of men or other living beings,—either through the '*animals*'—horses or others—yoked to the other cart,—or '*through the cart*' itself, or through some parts of it;—in such a case '*there is no doubt regarding the punishment*,' punishment is certain.

Or, when the fast-running horses, on being suddenly pulled up, at the sight of some obstacle in front, turn off sideways and kill the men that may be there on one side, or behind the cart,—then in such a case '*there is no doubt regarding punishment*,'—*i.e.* there is no punishment at all; and this for the simple reason that there is no fault of the driver in this case.

Or, the words may be construed to mean that—when the cart is '*on the road*'—*i.e., standing on the road*;—or '*stopped*'—*i.e., pulled up*—then in such a case the punishment is '*vichāritaḥ*' (this being the reading in place of '*avichāritaḥ*'), *i.e.*, specially prescribed.—(295)

VERSE CCXCVI

IN THE CASE OF A MAN BEING KILLED, ON THE SPOT, THE GUILT WOULD BE SIMILAR TO THAT OF THE THIEF; AND HALF OF THAT IN THE CASE OF THE LARGER ANIMALS, SUCH AS COWS, ELEPHANTS, CAMELS, HORSES AND THE LIKE.—(296)

Bhāṣya.

If on account of the driver being in the position above described, a man happens to be killed by the cart or by the animals yoked to it, then his '*guilt*'—*i.e.*, his punishment—'*would be* '*similar to that of the thief*.'

Though the punishment laid down for the thief is either 'death' or 'confiscation of the entire property' and so forth, yet in the present context it is the *fine* that is meant, and not 'death'; as is clear from the words—'*Half of that in the case of the larger animals,*'—since it is only of the *fine* that there can be a 'half.'

The 'fine' for the 'thief' has been held to be the 'highest amercement,' on the ground that the fine for killing smaller animals, which occupy the third place in the scale—having been put down at 'two hundred,' it is only right that in the case of human beings, who occupy the first place in the scale, it should be the 'highest amercement.'

'*Animals*,'—living beings, such as man, beasts and birds, etc.

'*Larger*';—in the case of 'cows,' 'largeness' consists in their superior quality, while in that of the elephant and other animals, it consists in their size.

The phrase '*and the like*' is meant to include the ass, the mule, the tiger and others.

Our opinion on this point however is as follows:—If the other punishments of the 'thief' were not meant to be applicable to the present case, then the author would have simply mentioned 'a thousand' as the fine. The mention of the '*half*' may justify the exclusion of the penalty of 'death'; but all the other penalties,—such as 'confiscation of the entire property,' and so forth—that have been prescribed in the case of the thief,—must be taken as meant to be applicable to the case of men.

"It cannot be right to apply to the case of man-killing any penalty other than 'death'; because under 8·323 below, it is clearly laid down in so many words that 'death' shall be the penalty in the case of killing a man. Under the circumstances, why should the other explanation (whereby only the other penalties are made applicable) be accepted, simply because the term 'half' happens to be used in another sentence? It would be far better to attribute some other figurative meaning to the term 'half' itself."

This would be true if there were any other way of construing the term 'half' with 'death.' 'Punishment similar to that of the thief' having been prescribed, it would not be right to take it to mean one thing (*death*) in the first sentence and another thing (*fine*, etc.) in the second.—(296)

VERSE CCXCVII

IN THE CASE OF HURTING PETTY ANIMALS, THE FINE IS TWO HUNDRED; AND FIFTY IN THE CASE OF THE AUSPICIOUS QUADRUPEDS AND BIRDS.—(297)

Bhāṣya.

Animals of small size are called '*petty*'; these may, in some cases, be '*petty*' in age,—as in the case of the calf, the elephant-cub and so forth; and in others they may be 'petty' in quality,—as the ram and such animals. As for the latter, the author is going to lay down 'five *māṣas*' as the fine for killing goat and sheep. Hence the present text must be taken as referring to the small-sized animals other than those two.

'*Auspicious quadrupeds*' are the deer and similar animals; which are '*auspicious*' in shape, as well as quality; and '*birds*,' such as the swan, the parrot and so forth. And the 'inauspicious quadrupeds and birds' are the crow, the owl, the jackal and so forth.

The term '*pashu*' here stands for *quadrupeds*.

People have held that the penalties laid down here refer to 'hurt' in general, and not to 'hurt' caused by *conveyances*, which form the subject-matter of the context. Because, it is contended, the treatment of the subject of 'hurt caused by conveyances' was finished at verse 295,—where it was declared that the punishment (for hurt caused by conveyances) has been '*vichāritaḥ*,' which means that 'its consideration has been finished.' And hence it is held that what is declared in the present verse has no connection with that context.

Similarly under verse 296, in the sentence 'half of that in the case of the larger animals,' the penalty spoken of as 'half' should, on the strength of other *Smṛtis*, be taken as referring to the cutting off of the hand or some such limb, which would be a minor form of 'death' (and hence 'half'). —(297)

VERSE CCXCVIII

IN THE CASE OF DONKEYS, GOAT AND SHEEP THE FINE SHALL CONSIST OF FIVE 'MĀṢAS'; AND THE FINE SHALL BE ONE 'MĀṢA' FOR THE KILLING OF A DOG OR A PIG.—(298)

Bhāṣya.

The term '*pāñchamāṣika*' means 'that of which *five māṣas* is the measure'; since the substance is not mentioned of which there shall be 'five māṣas,' the most reasonable conclusion is to take the mean, *i.e.*, a substance of medium quality; hence it is '*five māṣas*' of *silver* that is meant; so say some people.

But the right view is to take it as referring to *gold*; and in this sense the present assertion does not militate against anything that has been said before with regard to its being 'equal to it' (?)

The final conclusion is that the exact substance is to be determined in accordance with the circumstances of each individual case.—(298)

VERSE CCXCIX

THE WIFE, THE SON, THE SLAVE, THE SERVANT AND THE UTERINE BROTHER SHALL BE BEATEN WITH A ROPE OR A SPLIT BAMBOO, WHEN THEY HAVE COMMITTED A FAULT.—(299)

Bhāṣya.

'*Prāptāparādhāḥ*,'—those who have fallen upon, committed, a fault. '*Fault*' means *transgression of morality*;

when any such has been committed by them, they should be beaten.

As a matter of fact, beating is a form of *hurt*, and as such is forbidden by the general law—'no living beings shall be injured'; but an exception to this is made in the case of transgressions by the wife and other persons.

All these are relative terms; hence the meaning is that the wife is to be chastised by him whose wife she is, the slave is to be chastised by him who is his master, and so forth.

What is enjoined here is the method of keeping the persons on the right path, and not actual beating; so that chastisement may be administered verbally; and in cases where the fault is serious, there may also be beating.

In the place of '*uterine*' we should read '*younger*,' and the right reading would thus be '*bhrātā tathānujaḥ*'; since it is the younger brother that may be chastised by his elder brother, like a child. The half-brother also is under the tutelage of the elder brother, if the latter is a duly qualified person; hence he also, if he takes to the wrong path, should be prevented by all the methods, ending with *beating*.

'*Split bamboo*'—the bark of the bamboo. This has been mentioned only as illustrative of the lotus-fibre and other such objects which cause only slight pain.—(299)

VERSE CCC

BUT ONLY ON THE BACK PART OF THE BODY, AND NEVER ON THE UPPER PART; HE WHO STRIKES OTHERWISE THAN THIS INCURS THE GUILT OF A THIEF.—(300)

Bhāṣya.

He who strikes with things other than those specified—*i.e.*, with a stick or such things—or on a part of the body other than those mentioned,—*i.e.*, on the eye, etc.—'*incurs the guilt of a thief.*'

This is only meant to be deprecatory of the act referred to; and is not the injunction of an actual punishment; so that in

this case also the penalty shall be the same as that in other cases of 'hurt.'—(300)

VERSE CCCI

THUS HAS THE LAW RELATING TO PHYSICAL ASSAULT BEEN FULLY EXPLAINED; AFTER THIS I AM GOING TO EXPOUND THE LAW FOR THE REGULATING OF PUNISHMENTS IN CASES OF THEFT.—(301)

Bhāṣya.

'*The law relating to assault*'—the rules regarding punishments—has been fully *explained*. The term '*daṇḍa*' as occurring in the name of the 'head of dispute' (*daṇḍa-pāruṣya*), has been used as indicating the weapon of assault (*stick*).

After this I am going to expound the several kinds of penalties to be inflicted on the thief.

This verse serves the purpose of introducing the next head.—(301)

XLIII. (L) Theft

VERSE CCCII

THE KING SHALL MAKE THE BEST EFFORTS FOR SUPPRESSING THIEVES; BY THE SUPPRESSION OF THIEVES COMES FAME AND THE KINGDOM PROSPERS.—(302)

Bhāṣya.

It is possible that a certain king may be too merciful and hence not undertake the work of suppressing thieves, regarding it to be a cruel act of injury; hence with a view to prompt such a king to do his duty, the text puts forward a valedictory passage appraising the suppression of thieves. The meaning is that the act of punishing thieves does not involve anything wrong in the way in which the 'injury of living beings' does; on the contrary, in the case of thieves, it is the act of inflicting hurt on them which serves a visibly useful purpose and enhances the fame of the king.

In the present work several purely valedictory passages have been introduced with a view to indicate that it belongs to the same category as the *Veda*, in which most of the injunctions are found to be accompanied by valedictory passages; so that from similarity to this latter, it would be thought that what is said in the text is sanctioned by the Veda. Further, there are certain persons who become more quickly prompted to a certain course of action by the force of valedictory descriptions.

'*Best efforts*'—He should have recourse to the best and most vigilant methods; employing spies to try their best to track them down directly as well as openly.

'*Stēna*' is *thief*.

'*Nigraha, suppression*' means *putting down* by such means as death, imprisonment and the like.

If this is done, the king acquires '*fame*', good name; all the people saying—'The kingdom of this king is free from troubles,—thieves do not attack the people,—night is like day.'

'*The kingdom prospers.*'—'Kingdom' means the *country*, and when its inhabitants are not attacked by thieves, they prosper in wealth and become affluent, and inhabitants of other countries also are attracted to settle in this kingdom on account of its being free from troubles; and thus also '*the kingdom prospers.*'—(302)

VERSE CCCIII

THE KING WHO IMPARTS SECURITY IS EVER TO BE HONOURED; HIS SACRIFICIAL SESSION CONSTANTLY PROSPERS, ACCOMPANIED AS IT IS BY THE GIFT OF 'SECURITY.'—(303)

Bhāṣya.

'*Security*'—from thieves and such dangers, as also from his own officers, who are prevented from inflicting undue punishments.—He who '*imparts*' such security '*is to be honoured, ever*'; *i.e.*, even in ordinary conversation, and also when he happens to retire to the forest on having lost his kingdom.

'*Sacrificial session,*'—a particular form of sacrificial performance, such as the *Gavāmayana* and the like—'*prospers*'—becomes accomplished in all its details; this is what is meant by the 'prospering' of the sacrifice.

What is meant is that the king acquires every day the merit that is obtained by the due performance of the sacrificial session.

'*The gift of security.*'—In other sacrificial sessions there is no gift or fee; the act here referred to however is superior to them all, in as much as it is accompanied by a gift, and the gift too is not in the form of cows and horses and the like, but of a totally different form; hence it is only right that it should be regarded as superior to the sacrificial session—(303).

VERSE CCCIV

TO THE KING WHO PROTECTS (HIS PEOPLE) ACCRUES THE SIXTH PART OF THE SPIRITUAL MERIT OF ALL PERSONS; AND THE SIXTH OF THEIR DEMERIT ALSO ACCRUES TO HIM, IF HE PROTECTS THEM NOT—(304).

Bhāṣya.

The king obtains the sixth part of the spiritual merit arising from the open performance of sacrifices by the inhabitants of villages, as well as by those living in forests; so also the sixth part of the 'demerit' acquired by the secret acts of stealing and the like committed by thieves and others. It is not only by his failure to protect those who are robbed by thieves that the king incurs sin, but also by his failing to suppress those who, by committing theft and such other misdeeds, incur sin, a portion whereof falls upon the king. Because 'protection' also means saving them from the incurring of sin. So that if the king fails in this duty of his, it is only right that he should incur sin.

"In as much as the protection rendered by the king is in return for what he receives as wages (in the way of taxes), it is not right to say that he obtains the sixth part of the people's spiritual merit."

It has already been explained that there are many persons who pay no taxes at all,—such as the poor, the orphans, the ascetics and so forth. So that if the king fulfills his full duty, what incongruity is there in the assertion made in the text?—(304)

VERSE CCCV

WHEN ONE READS THE VEDA, WHEN ONE PERFORMS A SACRIFICE, WHEN ONE MAKES GIFTS, WHEN ONE WORSHIPS,—TO THE SIXTH PART OF EACH OF THOSE THE KING BECOMES ENTITLED, IN CONSEQUENCE OF PROPERLY PROTECTING THE PEOPLE—(305).

Bhāṣya.

It has been said above that the merit '*of all persons*' accrues to the king; this same idea is elaborated in the present verse.

The reading of the Veda and the other acts are already known from other sources as bringing merit.

'*Worship*'—is the offering of worship to gods and to one's superiors.

'*Of each of those*',—this should be construed with the term '*adhyayanādēḥ*' '*padārthasya*' (understood); since the term '*kriyā*' would be feminine (and hence not construable with '*tasya*').

'*Sixth part*';—this does not mean that five parts of the fruit of the act accrue to the doer, and the sixth to the king; because it is understood that when the agent undertakes to do an act, he does it with the motive of obtaining its whole fruit; nor can the merit or demerit of an act done by one person accrue to another; as it is a settled fact that the fruit of an act cannot accrue to any one else except the doer of it; hence what is meant is that the merit that accrues to the king from his act of fulfilling his duty of protecting the people is equal in amount to the said '*sixth part*'.—(305)

VERSE CCCVI

THE KING WHO, ACCORDING TO THE LAW, PROTECTS ALL CREATURES AND STRIKES THEM WHO DESERVE TO BE STRUCK, OFFERS, DAY BY DAY, SACRIFICES AT WHICH HUNDREDS OF THOUSANDS ARE GIVEN AWAY.—(306)

Bhāṣya.

'*Creatures*'—movable as well as immovable beings.

'*Protects*'—these from thieves.

'*Striking those who deserve to be struck*'—who are liable, under law, to the penalty of death.

Such a king daily acquires the merit of performing such sacrifices '*at which hundreds of thousands are given away*'—*e.g.*, the *Pauṇḍarīka* and the rest. This has been added by way of praise of the act—(306)

VERSE CCCVII

THE KING, WHO, WITHOUT AFFORDING PROTECTION, TAKES TRIBUTES, TAXES, DUTIES, PRESENTS AND FINES, WOULD IMMEDIATELY SINK INTO HELL.—(307)

Bhāṣya.

'*Tributes*' and the rest are the names of the various kinds of royal dues; known by several names in several countries, just like the words '*sūpa*', '*māṇavaka*' and the rest. Of these '*tribute*' is the sixth part of the grain-produce;—'*tax*' is what is paid in cash;—'*duties*' are what the tradesmen pay;--'*presents*' are offering of fruits and the like.

If a king takes all this, and yet does not protect the people from thieves, he would '*immediately*'—having his life-span cut short—'*sink into hell.*'

The meaning of the verse is that—'for fear of having his life span cut short and sinking into hell, the king should receive his dues and afford protection to the people.'—(307)

VERSE CCCVIII.

HE WHO AFFORDS NO PROTECTION AND DEVOURS THE PEOPLE, GRABBING HIS TRIBUTE OF THE SIXTH PART OF THE PRODUCE,—HIM THEY DECLARE TO BE THE IMBIBER OF THE FILTH OF THE WHOLE PEOPLE.—(308)

Bhāṣya.

This verse is a deprecatory supplement to what has gone before.

'*Affords no protection,*' and '*devours*'—*i.e.*, lives upon the people, by taking the royal dues. This same idea is stated more clearly—'*grabbing his tribute.*'

Such a king, all cultured men declare to be the '*imbiber of*' —who draws upon himself—'*filth*'—sin—'*of the whole people*' —of all his subjects. That is, such a king is befouled by the sins of his people.—(308)

VERSE CCCIX.

HE WHO HEEDS NOT THE BOUNDS OF MORALITY, WHO IS A DISBELIEVER, WHO IS EXTORTIONATE, WHO DOES NOT AFFORD PROTECTION, AND IS GRABBING,—SUCH A KING ONE SHOULD REGARD AS DOOMED TO PERDITION.—(309)

Bhāṣya.

'*Bounds of morality*'—*i.e.*, moral laws based upon scripture and the usage of cultured men; he by whom those are '*not heeded*'—*i.e.*, who transgresses them.

'*Disbeliever*'—who holds that 'there is no higher world,—there is nothing in charity—nothing in sacrifices.'

The former— 'who heeds not the bounds of morality'—is one who acts against the law, through hate and other passions (and who does not hold wrong opinions), while the latter is one who *denies* the law, and adheres to principles contrary to it.

'*Extortionate*'—he who extorts money from the people, by illegal fines and such other means.

Similar to him is '*he who does not afford protection.*'

'*Such a king one should regard as doomed to perdition,*'—*i.e.*, as going to sink into hell before long.

Another reading for the last quarter is '*asatyañcha nṛpam tyajēt*';—which means that if a king says one thing and does another, and is thus, '*untruthful,*'—him '*one should abandon,*'—*i.e.*, one should not live in the realms of such a king.—(309)

VERSE CCCX

HE SHALL CAREFULLY SUPPRESS THE UNRIGHTEOUS BY THREE MODES (OF RESTRAINT)—BY IMPRISONMENT, BY ENCHAINING AND BY VARIOUS FORMS OF 'IMMOLATION.'—(310)

Bhāṣya.

Having duly emphasised, by means of valedictory declarations, the duty of restraining thieves, the text proceeds to lay down the law regarding punishments.

'*The unrighteous*'—stands, in this context, for the *thief*; him the king shall '*suppress*'—keep in check—'*by three modes of restraint*,'—the term '*nyāya*' being used in the literal sense of 'restraint.'

'*Imprisonment*,'—confinement in the royal fort, or in the prison-house.

'*Enchaining*'—keeping in the prison-house, but in chains.

'*Various forms of immolation*,'—*i.e.*, beginning from *beating* and ending with actual *death* caused by the killing of the body.

That the methods of restraint are *three* would have been clear from the enumeration itself; hence the addition of the epithet '*three*' is to be taken as serving the purpose of indicating that there are other methods of restraint also; such as the pouring of heated oil and so forth.—(310)

VERSE CCCXI

FOR BY SUPPRESSING THE VICIOUS AND FOSTERING THE VIRTUOUS, KINGS BECOME PURIFIED, JUST AS TWICE-BORN MEN BY THE DAILY SACRIFICES.—(311)

Bhāṣya.

Persons full of vice are called '*vicious*'; of these there should be '*suppressing*' in the manner described above.

Those who behave in accordance with the scriptures

are called the '*virtuous*';—of these there should be '*fostering*,' *i.e.*, favourable treatment to the best of one's ability.

By this '*kings become purified*'—freed from sins—as if by the performance of expiatory rites.

This is only a commendatory declaration.

Or, being '*purified*' may be taken as consisting in *the non-incurring of sin.*

Just as Brahmaṇas are '*purified*' by the '*daily sacrifices*'—the daily performance of the five Great Sacrifices.—(311)

VERSE CCCXII

THE KING SHOULD ALWAYS FORGIVE THE PARTISANS OF LITIGANTS WHO ABUSE HIM, AS ALSO THE YOUNG, THE AGED AND THE INFIRM,—THEREBY ACCOMPLISHING HIS OWN WELFARE.—(312)

Bhāṣya.

'*Partisans of litigants*,'—*i.e.*, the relations and friends of the plaintiff and the defendant. When one of the parties is imprisoned, his father or mother may '*abuse*'—cast aspersions upon, or curse—the king; then he should forgive them.

Also the litigants themselves, when they happen to be '*young or aged or infirm*.'

In this manner his own welfare becomes accomplished. This 'accomplishment of welfare' is the fruit of obeying the injunction 'shall forgive.'—(312)

VERSE CCCXIII

HE WHO, ON BEING ABUSED BY MEN IN DISTRESS, FORGIVES, BECOMES EXALTED TO HEAVEN, BY THAT ACT; WHILE HE WHO, THROUGH KINGLY PRIDE, DOES NOT FORGIVE, GOES, BY THAT ACT, TO HELL.—(313)

Bhāṣya.

'*Men in distress*,'—*i.e.*, the man who is punished, or his relations.

'*Abused*'—reproached.

'*Forgives*'—does not become angry.

'*By that act*'—by the act of forgiving.

'*Becomes exalted to heaven*'—the root '*maha*' (in '*mahīyatē*) belongs to the '*Kaṇḍvādi*' group, hence the '*ya*' in the middle of the word. The meaning is that 'in heaven he gains an exalted position.'

For this reason, without showing any anger, he shall forgive.

If, however, under the influence of pride, thinking himself to be all-powerful, he does not condone the abuse, then, by that act he goes to hell.

The term '*men in distress*' includes *the young and the infirm* also; since the present verse is supplementary to the foregoing (where these latter have been mentioned).—(313)

VERSE CCCXIV

THE WISE THIEF SHALL APPROACH THE KING, WITH FLYING HAIR, CONFESSING THE THEFT, WITH THE WORDS—'I HAVE DONE THIS, PUNISH ME';—(314)

Bhāṣya

In as much as nothing is specified, the '*thief*' here is to be understood as one who has stolen *gold*; specially as it is only in the case of such a thief that other Smṛiti-texts have laid down the 'approaching of the king.' The present text itself cannot be taken as an injunction laying down the act of 'approaching'; because the subject-matter of the present context consists of the injunction of punishments for theft, as clearly declared above in Verse 301—'I am now going to expound the law relating to punishments for theft.' Hence the present can only be taken as a *re-iteration* of the act of 'approaching' (enjoined elsewhere); hence it must mean that 'one who has stolen gold should approach the king'—'*with flying hair*.'

'*Wise*'—courageous.

Another reading for '*dhīmatā*,' '*wise*,' is '*dhāvatā*,' '*running*.' '*Confessing*'—proclaiming his crime on the road—'*I have done this*'—act of stealing Brāhmaṇa's gold—inflict upon me the proper punishment.'—(314)

VERSE CCCXV

—CARRYING ON HIS SHOULDER A PESTLE, OR A CLUB OF KHADIRA WOOD, OR A SPEAR SHARP AT BOTH ENDS, OR AN IRON STAFF.—(315)

Bhāṣya.

Some people hold that the weapons to be carried have been mentioned in the particular order in view of the caste of the thief.

But this is not right; as in that case there would be no justification for the term 'or'; and further, people do not recognise this as the expiation meant for the Brāhmaṇa thief, as we shall explain in the section on 'Expiation.'

It is only the *club*, and not the *pestle*, that is to be taken as qualified by the epithet '*of khadira wood*.'—(315)

VERSE CCCXVI

THE THIEF BECOMES ABSOLVED FROM THE THEFT, EITHER THROUGH PUNISHMENT OR THROUGH ACQUITTAL. BY NOT PUNISHING THE THIEF, THE KING IMBIBES THE GUILT OF THE THIEF.—(316)

Bhāṣya.

'*Through punishment*'—with the stroke of the pestle and other things, the thief of the *Kṣattriya* and lower castes '*becomes absolved*' from the guilt;—or '*through acquittal*'—*i.e.*, by being let off, being addressed with the words—'Go, you have been forgiven.'

In regard to the *Brāhmaṇa thief*, under 11·100 below, 'immolation' and 'austerities' have been prescribed. But as a

matter of fact, there can be no 'immolation' of the *Brāhmaṇa*; and 'austerity' being an expiatory rite, the 'approaching' of the king could not be with a view to any such austerity. Hence the '*acquittal*' here spoken of must also refer to the *Kṣattriya* and other castes.

But there can be this 'acquittal' only after the fine has been realised; because of what is said in the second half of the verse. And when the man has become absolved through this acquittal, his non-punishment cannot render the king open to censure.

It might be argued that—"Punishment and acquittal both being sanctioned by law, the blame spoken of lies on the king in that case with reference to which punishment has been enjoined."

But this would make the injunction optional; and it is not right to assume as optional what has been declared to be absolute. In fact Vashiṣṭha and others have laid down the law in general terms:—'The thief contaminates with his guilt the king who acquits him; but if the king kills the guilty thief, since he kills him legally, no blame attaches to him';—and it cannot be right to regard this as optional.

It is true that the injuring of a living being is in one place forbidden: the assertion 'one should not injure any living being,' forbidding such injury as might be inflicted under the influence of some passion. In another place it is sanctioned, as for instance, in connection with the *Agniṣṭoma* sacrifice.

But in the case in question the act of 'punishing' cannot, in the face of the direct injunction of it, be held to be forbidden by the declaration regarding 'acquittal.'

How can it be regarded as *not forbidden*? The general prohibition 'injure not a living being' cannot be set aside, except when there is a direct injunction of such injury (in any particular case).

It might be argued that—"The case in question does not fall within the scope of the prohibition; since it is conducive to the fulfilment of a particular act that has to be done."

But, in the absence of a distinct injunction, how can it be believed that a certain injuring is conducive to the fulfilment of an act ?

It may be held that this would be learnt from worldly experience.

But in that case, the act being an ordinary worldly one,—how could any prohibition affect it ?

Let us consider the nature of the main act in question. If it is Vedic, then the injuring of animals which forms part of that act must also derive its sanction from the Veda. Because the principal and its subsidiary both must derive their sanction from the same source. If, even in the case of a *Vedic* act, a mere desire for gain forms the motive, then, in that case, the injuring of the animal becomes a *worldly* act. So that, in the case of the injuring of human beings by the king inflicting punishments, the act forms part of that action of 'protecting the people' which is undertaken by way of livelihood ; and as such it cannot form the subject of any Vedic Injunction. In fact, even if the injuring formed part of a prescribed act, it could not form the object of prohibition ; as it would stand on the same footing as the *Shyēna* sacrifice. The act of injuring again does not form a necessary factor even in the worldly act (of protecting) ; for it is not impossible to carry on the work of protection without inflicting injury ;—the same purpose being served by *reprimanding* and other similar means also.

It is not necessary that the motive behind the principal act and its subsidiaries should be of the same kind. If it were, then there would be no difference in the nature of the immolations of the two animals offered to Agni-Soma (?). So that even when the principal act is prompted by a desire for gain, it may be possible to regard its subsidiary as prompted by an Injunction.

The act of 'injuring' under consideration however cannot be regarded as prompted by an Injunction ; as by its very nature, the act of 'protecting,' as also that of 'injuring,'

is 'worldly.' If they were prompted by an Injunction, then there would be an option between its prohibition (by the general prohibition of all injury) and its injunction as part of the act of 'protecting,'—just as there is in the case of the *holding* and *not-holding* of the *Shoḍashī* vessels.

Others hold that the verse consists of two distinct sentences ;—the first half of the verse describing the way in which the thief becomes absolved from guilt, and the latter indicating the impropriety involved in the king's failure to punish the thief. So that in a case where the king lets off the thief, thus voluntarily incurring the sin of not punishing him,—the thief does become absolved from his guilt.

Similarly when a Brāhmaṇa-thief surrenders himself, if he is killed, he does become absolved from guilt ; since we have the text—'Becoming the target of armed men, etc.' (11.73). And even though in striking the Brāhmaṇa the king may be going against the prohibition—'For the Brāhmaṇa there shall be no corporeal punishment' (Gautama, 12.46),—yet there can be no doubt that the Brāhmaṇa, thus punished, becomes absolved from his guilt.

'*By not punishing*'—not striking him with the pestle or other things—he becomes contaminated with the guilt of the thief.—(316)

VERSE CCCXVII

THE EMBRYO-KILLER EXPURGATES HIS GUILT ON HIM WHO EATS HIS FOOD, THE MISBEHAVING WIFE ON HER HUSBAND, THE DISCIPLE AND THE SACRIFICER ON THE PRECEPTOR, AND THE THIEF ON THE KING.—(317)

Bhāṣya.

'*Annāda*'—one who eats food.

'*Bhrūṇahā*'—he who has killed a Brāhmaṇa.

This latter '*expurgates*' throws upon '*the man who eats his food*'—'*the guilt*,' of killing the *Brāhmaṇa* ; just as when

the dirty cloth is washed in water, its dirt becomes thrown into the water.

This is a purely valedictory declaration. The meaning is that the guilt becomes separated from the Brāhmaṇa-killer, and attaches itself to the other man.

On the '*pati*'—the husband—'*the mishaving*'—adulterous —'*wife*'—if he condones the act. Here also the guilt disappears from the wife and attaches itself to the husband.

'*On the preceptor, the disciple and the sacrificer*';—if the disciple transgresses the laws relating to sun-rise, etc., and the preceptor condones it, the guilt becomes thrown upon the latter. Similarly the 'sacrificer' on the officiating priest; since the latter is a 'preceptor'; that is why the 'officiating priest' has not been mentioned separately.

Similarly '*the thief on the King*,'—if he is not punished by the King.

If the sacrificer, in course of the sacrificial performances, transgresses the rules, and does not adhere to the advice of the officiating priest,—then he should be abandoned by the latter; and he is not to be chastised and beaten, in the manner of a disciple.

In regard to the '*man who eats his food*' and the rest, the present text should not be taken as laying down an injunction; the whole of it is purely declamatory.—(317)

VERSE CCCXVIII

MEN WHO, HAVING COMMITTED CRIMES, HAVE BEEN PUNISHED BY KINGS, BECOME FREED FROM GUILT AND GO TO HEAVEN, JUST LIKE WELL-BEHAVED GOOD MEN.—(318)

Bhāṣya.

It has been said above that by suppressing criminals the King protects the well-behaved. This same idea is further clearly stated.

Those on whom punishments have been inflicted by the King,—such men '*having committed crimes, become freed from*

guilt,' by the punishment meted out by the King; *i.e.*, their sin becomes set aside.

Their sins set aside, they go to heaven, by virtue of those acts of theirs which entitle them to enter heaven. A serious crime stands in the way of the fruition of meritorious acts.

Like the men who are '*well-behaved*'—those who constantly perform meritorious acts; and are hence '*good*'—righteous.

The difference between the two is that in the case of the good men, there has been no guilt at all, while in the case of criminals, it has come about, but has been destroyed by the punishment; so that in the former case there is prior negation, while in the latter there is negation by destruction.

The use of the term '*men*' in the text indicates that what is stated here does not refer to *thieves* only.

The term 'punishment' however continues to stand for *corporeal punishment*, and hence does not go beyond the sense in which it has been used in the present context.

Punishment in the form of fines comes useful to the king,—that being his means of livelihood; but in the case of corporeal punishment it cannot be denied that if it is useful to any one; it must be so to the person punished; because the hurt inflicted therein affects the man's skin.

In this connection, people may have the following idea:—"Protection of the people is not possible without hurting (criminals), and protection serves the purposes of the king; how then can the corporeal punishment be held to serve the purpose of the person punished?"

Is this argument meant to deny the palpable fact that *protection* is useful for the *protected people*? Certainly it cannot be said that the king employs all his officers only for the purposes of his own protection. If again, the corporeal punishment served the useful purpose of 'protection' only, it could not be regarded as useful for the person punished. Further, why should 'protection' of the people be not possible without the 'hurt' (involved in the punishment)? If the hurt is inflicted with the idea that if the man were not punished, he would repeat the act,—this purpose could be

served even by reprimanding and such other means. If the idea be that on seeing him punished others would desist from similar acts,—the suffering meant to be caused could be brought about even by fines. Then again, even though criminals are punished, thousands of men are found to do the same act again and again.

From all this it follows that the corporeal punishment, while tending to 'protection' (of the people), has to be regarded as serving the purpose of purifying the person punished. It is for this reason that there are rules laid down regarding the cutting off of limbs and other forms of corporeal punishment. All this produces an invisible effect in the persons punished, and at the same time serves the purposes of the king (in the form of protection).

Thus it is established that the criminals become absolved from guilt only when there is corporeal punishment, and not when they are only fined.

It is for this same reason that in connection with the most heinous offenders, whose entire property has been confiscated, and who have, by way of punishment, been made to stand in water,—*branding* has been prescribed, with a view to guard against people associating with them. If they became purified by the fine, any such branding would be futile.

In the present context, the special rules that have been laid down in regard to the criminal who has surrendered himself, and has not been arrested and brought up for trial, may refer to *thieves* only; but what is said in the present verse is meant to apply to *all* corporeal punishments.—(318)

VERSE CCCXIX

When one steals the rope or the water-pot from the well, or damages a water-drinking establishment, he should be punished with a fine of one 'Māṣa,' and should restore the article to the place.—(319)

Bhāṣya.

A place where people drink water is called '*prapā*,' '*water-drinking establishment*,' the place where water is stored after having been drawn from a reservoir.

The exact nature of the substance is not stated—of what substance the fine of a '*māṣa*' shall consist. It should be regarded as being copper or silver.

The article—rope and the rest—he shall restore '*to the place*' and not to the king.—(319)

VERSE CCCXX

THERE SHALL BE 'IMMOLATION' FOR ONE WHO STEALS MORE THAN TEN JARS OF GRAIN; IN OTHER CASES HE SHOULD BE MADE TO PAY ELEVEN TIMES AS MUCH, AS ALSO MAKE GOOD THE PROPERTY TO THE OWNER.—(320)

Bhāṣya.

The term '*jar*' is used in the sense of a particular measure, and not in that of one *jarful* only. The exact quantity is sometimes 20 seers, and in others 22 seers according to the custom of the place.

He who steals more than ten 'jars,' should be punished with 'immolation.' This rule is relaxed in accordance with the circumstances attending each case.

'*In the rest*,'—*i.e.*, in the case of ten jars and less,—the fine shall be eleven times the quantity stolen.

'*The property shall be made good to the owner*';—this applies to all cases of theft.

'*Grain*'—under this term are included seventeen things—the *Vrīhi*, the *Yava* and so forth,—as mentioned in the *Smṛtis*.—(320)

VERSE CCCXXI

IN THE CASE OF ARTICLES WEIGHED BY SCALES,—GOLD, SILVER AND THE REST,—IF MORE THAN A HUNDRED (ARE STOLEN),

THERE SHALL BE IMMOLATION, AS ALSO IN THE CASE OF MOST FINE CLOTHES.—(321)

Bhāṣya.

'*Dharima*'—scales;—things weighed by means of scales are called '*dhrimamēya.*'

In as much as clarified butter and other liquid substances are weighed by the seer and other measures, people might think that solid substances are not meant here; hence the author has added—'*gold, silver and the rest.*'

Since *silver* would have been included under the phrase '*and the rest,*' its special mention may be taken to indicate that what are meant are only such things as are equal to it in value; it is thus that coral and other precious stones become included, but not copper, iron and such things.

Of these things, if more than a hundred is stolen, there shall be '*immolation.*'

"What is it of which there should be a *hundred*? A hundred '*palas*' or '*karṣas*' or '*kārṣāpaṇas*'?"

Some people say that 'hundred *palas*' are meant.

But there is no ground available for restricting it to any particular measure. Hence it should be taken as referring to that particular measure which, in the country concerned, happens to be the standard of weighment by scales. The expression 'a hundred of gold' pertains, in some places, to '*tolās*' and in others to '*palas*'; hence the rule is to be interpreted in accordance with local usage.

'*Also in the case of fine clothes,*'—such as silken and coloured raiments; here also we have to construe the words—'*if there are more than a hundred, there shall be immolation.*' In the case of *Sāris* two pieces (pair) are counted as 'one,' while in that of flowered wrappers and such other clothes, it is only one piece.

"In as much as the phrase '*gold, silver and the rest*' would have sufficed to express what is meant, it was entirely useless to add the term '*things weighed by scales,*'

It has been added for the purpose of including such high-priced things as camphor, *agaru*, musk and so forth. The phrase 'and the rest' (used along with 'gold and silver') includes only the igneous substances (metals), or only such substances as are weighed in '*niṣkas*' and other measures, which are not applicable to camphor and other like things.

Though the limit of 'a hundred' is put down in regard to both gold and silver, yet, in actual practice a distinction has to be made in the penalty inflicted in the two cases; just as there is in the expiatory rite imposed in connection with them; and this for the simple reason that things distinctly unequal should not be treated as equal. Hence in the case of silver, there is to be 'immolation' only if the value of the quantity stolen is equivalent to 'a hundred of gold.'

In the case of camphor and other things, the number 'hundred' would pertain to '*palas*.'—(321)

VERSE CCCXXII

IN THE CASE OF MORE THAN FIFTY, THE CUTTING OFF OF THE HANDS IS PRESCRIBED. IN OTHER CASES, THE KING SHALL INFLICT A FINE OF ELEVEN TIMES THE VALUE.—(322)

Bhāṣya.

This verse is easily understood.

'*Eleven times the value.*'—It is not only that the stolen article is *to* be restored; *for* sometimes it may *so* happen that a thing of the same kind is not available. Hence money or grain may be given in exchange.—(322)

VERSE CCCXXIII

[illegible] STEALING NOBLE MEN, AND SPECIALLY WOMEN, AND THE PRECIOUS GEMS, THE THIEF DESERVES 'IMMOLATION.'—([illegible])

Bhāṣya.

'*Noble,*'—born of good families and possessed of learning and other good qualities.

'*Specially women,*'—such as are possessed of good qualities, beauty and grace.

The particle '*cha,*' '*and,*' indicates that '*nobility*' and the other qualifications are meant, as far as possible, to be applicable to both 'men' and 'women.'

'*Precious gems,*'—such as diamond, lapis-lazuli, emerald and so forth.

Here also it is to be understood that the articles stolen should be equivalent in value to 'a hundred of gold'; otherwise, since the qualification 'precious' is a relative term, there would be no definiteness in the rule prescribing the punishment.

'*Deserves immolation*';—the exact meaning of 'immolation' is to be determined in all cases by the peculiarity of the circumstances of each individual case.

In the case of the stealing of men and women who are not 'noble,' or of gems that are not 'precious,'—there shall be a fine eleven times the value of what is stolen.—(323)

VERSE CCCXXIV

FOR THE STEALING OF LARGE ANIMALS, OF WEAPONS OR MEDICINES, THE KING SHALL DETERMINE THE PUNISHMENT, AFTER CONSIDERING THE TIME AND THE PURPOSE. —(324)

Bhāṣya.

'*Large animals,*'—the elephant, the horse and so forth. For stealing these the punishment is to be determined in accordance with '*the time and the purpose.*'

"In connection with all punishments, it has been declared that the time should be taken into consideration; *viz.* it is said—'In the inflicting of punishments, the king

shall take into consideration, the time, place, age and capacity?"

True; in ordinary cases the nature of the punishment is already fixed, and the said circumstances are taken into consideration only for the purpose of determining the exact degree of that punishment; *e.g.*, in cases where the penalty is put down as 'immolation,' whether it is to be actual *death* or only *beating*, could be determined by circumstances. In the case in question on the other hand, the nature of the punishment is peculiarly variable; *e.g.*, even though the sword may be worth only twenty *paṇas*, yet if it is stolen at a time when an enemy with uplifted weapon is near at hand,—the punishment would be *death*; in view of the time and the extremely useful purpose that would have been served by the stolen sword;- while under other circumstances, there would be only a fine, either double, or eleven times, the value of the sword. Similarly in the case of a medicine that is not easily available, and is extremely useful, being stolen at the very time at which it was going to be used,—or if, when easily available, it is stolen at the time when it has been just boiled, and if not taken at that very time, would cause great suffering to the patient,—the punishment in such cases would be most severe; in other cases, it would be small. There could be no such diversity unless there be some sort of difference in the cases. Otherwise it would suffice to put down only one verse as embodying the whole law of punishments. Hence the following statements have to be made—'At the time of war, the penalty for stealing a horse and such animals would depend on the needs of the king;—in the case of weapons needed by the king, it would be forgiven in some cases, while in others the punishment meted out would be very severe;—in the case of cows and buffaloes belonging to the people, the theft should never be forgiven by the king;—in the case of horses too, it would all depend upon the purpose served by them; *e.g.*, if the war is being waged in a hilly country, the horse would not be of much use there; so that if it be stolen, the punishment should not be very

severe.' Thus our sole guide in this matter is the maxim *that the king shall determine the penalty after considering the time.*—(324)

VERSE CCCXXV

For stealing cows belonging to a Brāhmaṇa, and for piercing them with the goad, and for stealing animals, the thief should be immediately made half-footed.—(325)

Bhāṣya.

'*Belonging to Brāhmaṇas*,'—kept by Brāhmaṇas, owned by Brāhmaṇas;—for stealing such cows;—the Locative ending in '*goṣu*' has the sense of the Genitive.

'*Animals*'—goats, sheep and so forth. No significance is meant to be attached to the plural number in the words here used.

'*Immediately*,'—at the very moment; without hesitation.

'*Ardhapādikah*,' 'half-footed';—'*ardhapāda*' means *half of the foot*; and he who has only half of his foot left is called 'half-footed'; and one becomes so only if half of his foot is cut off. Hence what the sentence means is 'that half of the thief's foot should be cut off.'

'*Kharikā*,' 'goad,' is that by which oxen are driven in chariots or fields.—'*Piercing*,'—causing pain by driving with the goad. The term '*piercing*' has been explained by the older writers as standing for *driving*; and certainly the man causes pain to the animal by *driving* it. Others hold that the punishment laid down is to be inflicted only when the *driving* is done *with the goad.*

Others explain the term '*Kharikā*' as meaning the *hind quarters* of the animal. (And what would be punished, according to this interpretation, would be *the piercing of the hind quarters of cows.*)

If however '*Kharikā*' is taken as standing for the cow that has the evil habit of running away,—then the keeper or

to the one else who pierces such the cow, should be made 'half-footed.'

Others interpret the Locative in '*goṣu*' literally, and explain the words as referring to the theft of cows and other products of the milk of cows, by supplying additional words.

But this cannot be right. For so long as sense can be made out of the words as they stand, why should any additional words be supplied ?—(325)

VERSES CCCXXVI—CCCXXIX

IN THE CASE OF THE THEFT OF YARNS, COTTON, FERMENTING DRUG, COWDUNG, MOLASSES, CURDS, MILK, SKIMMED CURD, WATER AND GRASS (326),—OF VESSELS MADE OF BAMBOO OR CANE, AS ALSO OF SALTS, EARTHENWARE, EARTH AND ASHES (327)—OF FISH, BIRDS, OIL, CLARIFIED BUTTER, MEAT, HONEY, AND OTHER ANIMAL-PRODUCTS (328)—OF OTHER THINGS OF THIS KIND, SPIRITUOUS LIQUORS, COOKED RICE AND ALL KINDS OF COOKED FOOD,—THE FINE SHALL BE DOUBLE THE VALUE OF THE THING (STOLEN).—(326-329)

Bhāṣya.

'*Yarns*'—woolen, jute and so forth.

'*Salts,*'—rock-salt, black salt, and so forth.

'*Other animal-products*'—the flesh, etc.

Other kinds of '*cooked food*'—such as sweet bread, sweetmeats, etc. The term '*ādi*' means *kinds*, kinship consisting in *similarity, equality, similar utility*. It is in this sense that butter, gruel, sugar-candy, sugar, coagulated milk, inspissated milk and so forth become included. The term '*animal-products*,' according to some, includes the wool, the skin and so forth.

'*And so forth*'—includes the products of the things mentioned; and as an example of this, the text has mentioned both '*curd*' and '*milk*.'

Similarly '*yarn*' includes also cloth made from yarns.

As for the '*nalikā*' and such things, even though they are made up of yarns, and are 'animal-products,'—yet, being already included under 'fine clothes' (verse 321), they are to be excluded from the present verse.

The term '*taila*' here stands for *oils* in general,—and not for the *oil of* '*tila*,' *sesamum*, only, as its derivation suggests. So that the oils of *linseed*, *Priyaṅgu*, *cardamom* and other things also become included.—(326-329)

VERSE CCCXXX

FOR FLOWERS, GREEN CORNS, SHRUBS, CREEPERS, TREES AND OTHER UNHUSKED (GRAINS), THE FINE SHALL CONSIST OF FIVE 'KṚṢṆALAS.'—(330)

Bhāṣya.

'*Flowers*'—The *navamallikā* and the rest.

'*Green corn*'—while still in the field.

'*Other unhusked*,'—'*anyēṣu aparipūtēṣu*';—in as much as this has the plural form, and '*husking*,'—which consists in the removing of chaff and husks—is possible only in the case of '*grains*,' we construe this along with the term '*dhānyēṣu*,' 'grains,' of the next verse. As for '*shrubs, creepers and trees*' and ('*flowers*' which are expressed by the only other words in the verse with the plural ending), though the former have leaves, and the latter also are generally mixed up with leaves, yet they are never spoken of as '*husked*.'

The Locative ending refers to the '*stealing*,' mentioned in the preceding verse, from where it is construed here also.

In the case of these, there shall be a fine of '*five kṛṣṇalas*';—the '*kṛṣṇalas*' meant being of various metals, to be determined in accordance with the greater or less utility of the things stolen. The ancients have held that it refers to *gold* only.—(330)

VERSE CCCXXXI

FOR HUSKED GRAINS, FOR VEGETABLES, ROOTS AND FRUITS, THERE SHALL BE A FINE OF A HUNDRED, IN A CASE WHERE THERE HAS BEEN NO PROPITIATION; AND FIFTY, WHERE THERE HAS BEEN PROPITIATION.—(331)

Bhāṣya.

'*Roots, etc.*,'—*e.g.*, sugar-cane, grapes and so forth.

In a case of theft which is '*niranvaya*';—'*anvaya*' stands for '*propitiation*,' the adopting of a conciliatory attitude towards the owner, such as—'I took this thing under the impression that what is yours is mine also; if this be not so, then take it,'—or some such words;—where this is not done, it is a '*case where there has been no propitiation*'; and this being a form of 'robbery,' the punishment is severe.

A case where there has been such 'propitiation' is called '*sānvava*.'

Or, the meaning may be that there shall be a fine of 'hundred' in a case where there is no '*relationship*' between the parties,—such as living in the same village and so forth.

Or, '*niranvaya*' may mean '*unguarded*.' Where the watchman is present, since the fault lies with both (thief as well as the watchman), the punishment of the thief shall be slight.

The punishment here laid down refers to the case of stealing corns lying in the threshing yard, where they are husked. In the case of corns stored in the house, the fine shall be 'eleven times their value,' as declared above (320).—(331)

XLIV. Robbery.

VERSE CCCXXXII

IF THE ACT IS COMMITTED WITH VIOLENCE AND IN THE PRESENCE OF MEN, IT IS 'ROBBERY'; IT IS 'THEFT' WHEN DONE IN THE ABSENCE OF MEN, AND WHEN IT IS DENIED AFTER HAVING BEEN DONE.—(332)

Bhāṣya.

The taking away of what belongs to another is called 'theft'; and on account of the denotation of the root from which the word is derived, one who commits 'theft' is a 'thief.' But for cases of a particular kind of theft, special provisions have been made; that is why we have the present texts. In fact merely 'taking what belongs to another' cannot be 'theft,' because if it were, then in cases of debts and deposits also, punishments for 'theft' would have to be inflicted. The present texts have used a different name ('*sāhasa*,' 'robbery,' in place of '*steya*,' 'theft') with a view to laying down different forms of punishment.

'*Is denied*,'—*i.e.*, having done the act, the man says 'I have not done it.'

'*The act is committed*'—such as causes pain to others, *e.g.*, tearing clothes, setting fire, taking away property and so forth. In the case of 'setting fire,' though there is no 'taking away of property,' yet it is regarded as 'theft,' because it is done secretly, and denied afterwards. But in cases of 'theft,' the punishment is determined by the nature of the article stolen; this would, therefore, not be applicable to the case of 'setting fire.' It is for this reason that the present section has been separated from that on 'Theft.'

'*Act done with violence*';—since the text mentions 'act' in general, acts other than 'the taking away of other's property' also, when done with violence, would come under 'robbery.'

"What punishment could there be in the case of the setting of fire, and such acts, when done *without violence*?"

This we shall explain under the section on 'Extirpation of Criminals.'

It is for this reason that in a case where a house has been broken into, but nothing stolen, they declare the punishment to be what is laid down under 'Extirpation of Criminals.' Otherwise, this should have come under '*Theft*' itself.—(332)

CCCXXXIII

IF A MAN STEALS THESE THINGS WHEN THEY HAVE BEEN PREPARED, THE KING SHOULD FINE HIM ONE HUNDRED; AS ALSO HIM WHO STEALS THE FIRE FROM THE HOUSE. —(333)

Bhāṣya.

'*These things*'—yarns and the rest.

'*Prepared*;'—when the time for their being put to use,—in the form of being given away or enjoyed—is near at hand. Or it may mean '*refined*,' *i.e.*, 'having fresh capacity produced in them.' For instance, after the yarn is at first handed over to the weaver for being woven into cloth, it is doubled up, then turned up and so forth; the curd becomes 'refined' by having pepper, sugar and other things mixed with it; similarly milk, clarified butter and so forth.

In these cases the fine shall be 'one hundred.'

If the reading is '*ādyam*' in place of '*shatam*,' then the fine shall consist of the 'first amercement.'

'*Fire from the house*'—the fire kindled for the purpose of cooking meals; or the fire kindled in connection with the *Agnihotra* offerings; or the fire that is set up, without consecration, for the convenience of the cold-stricken poor. The same punishment applies to the case of all kinds of fire,—

kindled at the time of cooking, or for relieving the cold of the poor, or for making sacrificial offerings,—be the quantity of fire stolen large or small.

Though under verse 326 where punishment for the stealing of 'yarns' and other things is laid down, we have the phrase 'and other things' (which might include Fire also), yet there can be no determination of its 'value,' since there is no buying or selling of it (so that 'double the value' could not be determined). Though it would be possible to fix the fine at a sum which would be the double of that which would enable a sufficient quantity of fire to be kindled, or which would constitute the 'sacrificial fee' necessary for the rekindling of the fire.

In addition to this fine, the necessity of satisfying the owner remains (as laid down under 288 above).

Thus then, in the case of the stealing of the sacrificial fire-triad, the thief shall pay to the owner of the fire the amount that would be needed for the re-kindling rites and for the expiatory rites necessary under the circumstances.

For these reasons the punishment prescribed in the present verse must be taken as referring to the fire kindled for household purposes; since that would be of small consequence. In the case of the sacrificial fire, the fine must be 'double the value' (as laid down in 329). Similarly in the case of the theft of such minor sacrificial accessories as kusha, pebbles and such other things,—whose absence does not disqualify the sacrificer,—there should be cutting off of the limb,—says Shaṅkha. When however the fires themselves are stolen, the man becomes entirely incapacitated; why then should not the punishment in this case be most heavy?—(333)

VERSE CCCXXXIV

By whatever limb the thief operates against men, that shall the king take off, by way of retribution.—(334)

Bhāṣya.

The punishment here laid down is meant for one who is repeatedly addicted to stealing. If even on being found, the man does not remain in the path of rectitude, then, after having been fined thrice or four times, he should have his limb cut off,—irrespectively of the quality or quantity of the article stolen, as also of any considerations regarding his having broken through a wall or other details,—merely on the strength of his having committed the act of stealing.

When the thief acts,—*i.e.*, steals through the strength of any particular limb,—that limb the king should '*take off*'—*i.e.*, cut off. For instance, if the thief depending upon his fleet foot, runs off, under the impression that no one can overtake him,—then his feet should be cut off. When another relies upon his knowledge of the art of breaking through walls, he should have his hands cut off.

'*By way of retribution*'—with a view to make him receive a reward in keeping with his act.

Or '*pratyādēsha*' may stand for *reproach*, forcible, dignified, angry and contemptuous; consisting in the king's declaration 'he who acts thus, him shall I treat in this manner.' —(334)

VERSE CCCXXXV

NEITHER THE FATHER OR THE PRECEPTOR OR THE FRIEND OR THE MOTHER OR THE WIFE OR THE SON OR THE PRIEST IS UNPUNISHABLE FOR THE KING, WHEN THEY DO NOT KEEP WITHIN THEIR DUTY.—(335)

Bhāṣya.

"It has been asserted that 'the wife and the son form one's own body'; what would be the punishment inflicted upon one's self?"

It would consist of expiatory rites, austerities and charities.

Whoever does not perform his duty, or deviates from his duty, should be punished.—(335)

VERSE CCCXXXVI

When an ordinary man would be fined one 'Kārṣāpaṇa,' the king should be fined one thousand; such is the established rule.—(336)

Bhāṣya.

'*Ordinary man*'—a common person; who is not possessed of any special qualifications;—for a certain crime the King shall be fined a thousand times the fine that would be imposed upon an ordinary man;—the '*kārṣāpaṇa*' being mentioned only as a standard of fine.

Since punishment is meant to accomplish a visible purpose, it is only right that the king should punish himself also for any crime that he commits; as it is only by doing so that he can keep other men under check, and, in as much as he is very wealthy, he would not mind a small fine.

On the same principle the fine in the case of the king's officers,—ministers, priests and others,—shall vary.

The fine imposed upon himself should be either given away to Brahmaṇas, or thrown into water as an offering to Varuṇa; since it is going to be declared that Varuṇa 'holds the sceptre over kings' (9.245).—(336)

VERSE CCCXXXVII-CCCXXXVIII

In the case of theft, the guilt of a Shudra is eight-fold, that of the Vaishya sixteen-fold, and that of the Kṣattriya thirty-two-fold;—(337) that of the Brāhmaṇa sixty-four-fold, or fully hundred-fold, or twice sixty-four-fold; when he is cognisant of the good or bad quality of the act.—(338)

Bhāṣya.

'*When he is cognisant of the good or bad quality of the act*';—this points out the reason for what is here laid down; and from this it is clear that the penalty here prescribed is

meant for the educated. Thus then, if for a guilt an ordinary man is fined one '*Kārṣāpaṇa*,' the learned *Shūdra* incurs the '*eight-fold guilt*;'—that is, that which is connected with the number 'eight,' or that which is folded, multiplied, eight times. In either case the term '*eight-fold*' means that the educated Shūdra's guilt is eight times that of the ordinary man.

That of the *Vaishya* is double that of the *Shūdra*; since he is himself entitled to study the Veda and acquire the necessary knowledge, while the *Shūdra* can learn only a little through serving or associating with the *Brāhmaṇa.*

As for the *Kṣattriya*, though, in the point of knowledge, he stands on the same footing as the *Vaishya*, yet, in as much as the protecting of people forms part of his duty, his guilt is double that of the *Vaishya.*

As regards the *Brāhmaṇa*, the author cannot be content with prescribing any amount of penalty,—'*sixty-four*,—*hundred*,—*hundred and twenty-eight*.' Since it is his duty to expound the duties of men and instruct them, and thus guard them against evil.

What blame can attach to the common man, who is on the same level as the lower animals? Uneducated men cannot know the good or bad character of actions, and hence they are led to do what should not be done. If, however, the educated men were also to behave in the same manner, then alas! the world would be doomed! As there would be no third man to teach men their duty,—it having been declared that—'only two men are known in the world—the King and the learned Brāhmaṇa.' For the king, a heavy punishment having been already prescribed in the preceding verse, the present verse lays it down for the Brāhmaṇa.

Thus all that the present verse enjoins is *heavier punishment* (for the Brāhmaṇa), and the exact numbers are not to be taken literally. Because so far as the Brāhmaṇa is concerned, it has been declared that there can be no limit to his punishment. Nor would it be right to lay down any option—'this or that'—in this case [as it would be if the words were taken literally]: as there would be nothing to determine which of

them it should be in any particular case; since both the options being equally authoritative, it would be impossible to find any case in which the lower penalty could be imposed. What king is there, for instance, who would accept only a sixty-four-fold fine, and give up one the double of that figure? Further, one would have been admissible in the case only if punishments were meant to serve a transcendental purpose; as a matter of fact however, they are not meant to serve any transcendental purpose, as we have already explained. Says Gautama (12.17)—'For the educated there should be heavier punishment.' For these reasons the very indefiniteness of the assertion deprives it of injunctive force. Nor would it be right to take the option as determined by the qualifications of the culprit; as this has been already laid down under verse 232, *et seq.*

Further, the fact of the present passage being an injunction is indicated by the purpose served by it; and as that purpose is served by its being taken as prescribing *heavier punishment* in general, there can be no justification for its being taken literally and hence laying down options.—(337-338).

VERSE CCCXXXIX

FUEL FOR FIRE AND TREES, ROOTS AND FRUITS, AND GRASS, FOR FEEDING COWS,—THE TAKING OF THESE MANU HAS DECLARED TO BE NO THEFT.—(339)

Bhāṣya.

'*Vānaspatyam*' stands for *trees*, '*vanaspati*';—the affix having the reflexive force. When this is taken '*for feeding cows*,' it is not 'theft.'

'*Roots and fruits*'—of trees; as also lotus-roots, corns and so forth.

Under verse 326 *et seq.*, punishment has been prescribed in connection with 'roots and fruits,' along with 'yarns' and other things,—when taken for purposes other than the feeding of cows. Hence when the act is here said to be 'not theft,' it refers only to cases where they are taken '*for feeding cows.*'

According to another Smṛti-text however, punishment has got to be inflicted in a case where the man is not suffering from any actual shortage, and he takes the things through sheer childishness; specially when they are within an enclosure. Says Gautama (12.28)—'Fruits and flowers one may take as his own, of trees that are not enclosed.'

'*Fuel for fire*';—if the man who has set up the fire finds no trees near him, and finds that the fire would be extinguished, if he takes fuel for keeping it alive, there is no harm in this. He might supply the fire with fuel consisting of leaves; but in a village where leaves are not available in large quantities, if he takes some fuel, there can be no harm in this.

'*Grass for cows*';—the Dative in '*gobhyaḥ*' means 'for the sake of.'

In as much as the text specifies this, it would be wrong if the grass were taken for the purpose of making mats.

Some people hold that the term 'grass' itself indicates that it is meant for *cows*. But for them there would be no justification for the presence of the term '*for cows*,' '*gobhyaḥ*' (with the Dative); as in that case the Genitive would be the right form.—(339)

VERSE CCCXL

IF A BRĀHMAṆA SEEKS, EVEN BY SACRIFICING AND TEACHING, TO OBTAIN WEALTH FROM ONE WHO HAS TAKEN WHAT HAS NOT BEEN GIVEN TO HIM,—HE IS JUST LIKE A THIEF. —(340)

Bhāṣya.

This text is in the form of a corollary. The meaning is that the Brāhmaṇa who derives his livelihood from thieves should be punished like a thief.

'*Even by sacrificing and teaching*';—the term 'even' indicates other acts also; so that *accepting gifts* and friendly presents, etc., also become included.

Of the *Kṣattriya* and other castes, the means of living are other than these; such as trade and the rest. So that to their case the rule would apply if they received the property of thieves in the course of such transactions.

The Brāhmaṇa has been specially mentioned, with a view to prevent the possibility of his entertaining such ideas as 'I have acquired this by the lawful means of sacrificing for the man.'

'*Who has taken what was not given to him*'—*i.e.*, the thief.

'*Seeks to obtain*'—wishes to acquire.

If even though he may not have actually received the sacrificial fee, yet, he should be punished like a thief, simply on the ground of his having associated and having had dealings with a thief.—(340)

VERSE CCCXLI

IF A TWICE-BORN PERSON, RUNNING SHORT OF PROVISIONS WHILE ON A JOURNEY, TAKES TWO SUGAR-CANE STALKS, OR TWO ROOTS, FROM ANOTHER MAN'S FIELD, HE DOES NOT DESERVE TO BE MADE TO PAY A FINE.—(341)

Bhāṣya.

The text has used the term '*twice-born person*' with a view to preclude *Shūdras.*

'*On a journey*'—*i.e.*, not an inhabitant of the same village;—but there also he should be one '*who has run short of provisions*'—*i.e.*, whose journey-rations have been exhausted.

'*Two sugar-cane stalks*' and '*two roots*';—these are mentioned only by way of illustration, indicating small quantities of green vegetables, *mudga*-grains, leguminous grains and so forth. Says another Smṛti-text—'There is no prohibition regarding leguminous grains, cucumber and grass.'

'*From another man's field*'—*i.e.*, from a place belonging to another person;—even though it be within an enclosure. —(341)

VERSE CCCXLII

One who enchains the unchained, or sets free the enchained, as also one who takes away a slave, a horse or a chariot, incurs the guilt of the thief.—(342)

Bhāṣya.

Sometimes horses and other animals, freed from their tethers, are found to be grazing in fields covered with fodder; if during the time the master of the field or the keeper of the cattle happen to be asleep, and some one else '*enchains*'—ties them up,—the presumption is that he is going to steal the cattle, and hence he deserves to be punished like a thief. But there is nothing wrong in a case where one ties up an animal that may have strayed either from the owner's house or from the herd, with a view to keeping it from harm.

The same penalty applies to one who puts a rope round the neck of the cow; also to one who '*sets free*' those that are '*enchained*'—tied up with chains in the feet.

Similarly one who '*takes away slaves*'—those engaged to serve in return for maintenance,—by enticing them with such words as—'I shall pay you more, why do you stick to this man?'

For the enticing away of persons of noble families, the 'death-penalty' has been laid down above under 323, and the present verse lays down that for enticing slaves and similar persons; and just as in the former case what is meant is that persons belonging to noble families should not be enticed away, nor forcibly carried away by stealth,—so in the present case also.

'*Who takes away horses and chariots*';—Verse 324 has referred to horses belonging to the king, the present refers to those belonging to the people. In the former case the punishment depends upon the Rājā's wish, but in the present case 'immolation' is strictly laid down.

Though there are several forms of punishment for thieves, yet 'immolation' is what should be taken to be meant here,

on the strength of what is laid down in other Smṛti texts, such as—'Those who entice away prisoners, horses and elephants and those who attack people by force should be impaled.' In the present case however the general law relating to thieves—that of cutting off the limb whereby he does the act—may be applied.

Others take this verse to refer to 'chariots with horses yoked to them,' which includes the *bullock-cart* and the rest also.

Under this explanation, the exact punishment for the stealing of *horses only*, or *chariots only*, would have to be found out; specially as in other *Smṛti*-texts, 'immolation' has been prescribed for the stealing of *horses only*. It may be that the same penalty may apply also to the case of stealing *horses along with chariots*.

According to those who explain the '*haraṇa*,' '*taking away*,' of the text as *enticing away with inducements*, the term '*chariot*' has to be taken as standing for the *chariot-maker*; and this would include all kinds of mechanics. So that for enticing away a mechanic, the penalty would be the same as that in the case of the thief. Horses also are 'enticed away with inducements' by having a mare placed before them.—(342)

VERSE CCCXLIII

BY PUNISHING THIEVES IN ACCORDANCE WITH THIS LAW, THE KING OBTAINS FAME IN THIS WORLD, AND AFTER DEATH, UNSURPASSABLE BLISS.—(343)

Bhāṣya.

In the manner described above, he who punishes thieves, obtains '*fame*'—praise from all men, '*in this world*,'—as long as he lives; and '*after death, unsurpassable bliss*' in the shape of Heaven.

This sums up the section.—(343)

XLV. Violence.

VERSE CCCXLIV

THE KING WHO IS DESIROUS OF INDRA'S ETERNAL PLACE, AS ALSO OF IMPERISHABLE FAME, SHALL NOT IGNORE THE DESPERADO EVEN FOR A MOMENT.—(344)

Bhāṣya.

In the term '*sāhasikaḥ*,' '*desperado*,' 'desperation' means *violence*; hence the 'desperado' is one who commits violence; *i.e.*, the man who, not minding either the physical or spiritual effects of his acts, is prompted by the sheer spirit of violence, and openly engages himself in causing suffering to others by such acts as theft, hurt, adultery and so forth. This is what has been already referred to under 332.

This 'violence' is not anything different from *theft* and the rest; these same acts are called 'violent crimes' when they are done with a certain amount of daring. Such acts as setting fire, tearing clothes and the like, are also 'acts of violence,' since they involve the destruction of property.

The punishment of such a person the king '*shall not ignore*,'—should not delay,—'*even for a single moment*,' *i.e.*, he should be punished the moment he is caught.

'*Indra's place*,'—the place that belongs to Indra, *i.e.*, Heaven;—'*he who seeks to obtain*' that; or he who desires his own kingly position to be '*aindra*,' like that of Indra, in point of stability.

If the king punishes those that deserve to be punished,—exercising both rigour and mercy—his people become attached to him,—'as the rivers to the ocean,' as described above.

'*Imperishable and eternal fame*';—we have two qualifying epithets, because we have two nouns to qualify—'*eternal*

place,' and '*imperishable fame*.' Or both the epithets may be taken as qualifying 'fame';—'*perishing*' denoting *lessening of quantity*, and '*non-eternality*,' *absolute destruction*. And both these qualities belong to the 'fame'; it never wanes, and it never dies.

This is a valedictory description of things as they happen. —(344)

VERSE CCCXLV

HE WHO COMMITS VIOLENCE IS TO BE REGARDED AS THE WORST OFFENDER, AS COMPARED TO ONE WHO IS WICKED OF SPEECH, TO A THIEF AND TO ONE WHO HURTS WITH A STAFF.—(345)

Bhāṣya.

This is another declamation eulogising the injunction of punishment.

'*Wicked of speech*';—he who offends with words.

'*Taskara*' is a thief.

'*With a staff*'—the '*staff*' stands here for anything that hurts, any weapon.

In comparison to all these three kinds of offenders, dealt with in the three foregoing sections, the one going to be dealt with now is the worst.—(345)

VERSE CCCXLVI

THE KING WHO CONDONES THE PERPETRATOR OF VIOLENCE QUICKLY FALLS INTO DESTRUCTION AND INCURS HATRED.—(346)

Bhāṣya.

This also is a declamation.

He who condones the man addicted to violence—the causal affix in '*marṣayati*' having the reflexive force, it means 'forgives,' 'bears with,'—'*quickly falls into destruction*,' and

becomes hated among his people; and being thus hated, he comes to be assailed and overcome.—(346)

VERSE CCCXLVII

NEITHER FOR THE SAKE OF FRIENDSHIP, NOR FOR THE SAKE OF A LARGE GAIN OF MONEY, SHOULD THE KING LET OFF THE PERPETRATORS OF VIOLENCE, WHO CAUSE TERROR TO ALL LIVING BEINGS.—(347)

Bhāṣya.

For the reasons explained above, it is added—on account of his own friendship with the criminal,—or at the request of the minister or some other officer—or with the idea that the criminal himself is giving him a large amount of money,—the king shall not condone him; since perpetrators of violence cause terror to all creatures.

This also is purely declamatory.—(347)

VERSES CCCXLVIII-CCCXLIX

TWICE-BORN PERSONS SHALL CARRY ARMS: WHEN RELIGION IS INTERFERED WITH, WHEN THERE IS CONFUSION AMONG THE TWICE-BORN CASTES CAUSED BY THE EXIGENCIES OF TIME,—(348) IN HIS OWN DEFENCE, IN CASES OF HINDRANCE OF SACRIFICIAL FEES, IN THE CASE OF OUTRAGES UPON BRĀHMAṆAS AND WOMEN,—IF ONE STRIKES IN THE CAUSE OF RIGHT, HE INCURS NO SIN.—(349)

Bhāṣya.

From what has been said above (in 4.36) regarding the carrying of 'a bamboo-stick' the carrying of weapon being permitted to a Vedic-scholar, it is just possible that when possessed of much physical strength, if he were to take up arms, he would be regarded as a desperado; hence for fear of his becoming a criminal, it would seem that the carrying of weapons is forbidden to him; it is in view of this idea

that the present text sanctions the taking up of arms under certain circumstances—'*Twice-born persons shall carry arms.*'

This sentence ends here (as a general permission); the rest (of the two verses) is to be taken along with—'*if one strikes in the cause of right*, etc., etc.' Thus there are two distinct sentences here.

Some people hold that arms are to be taken up only under the circumstances described here (and hence they take the whole of the two verses as a single sentence). But according to this view, what would be the condition of the man who would be unexpectedly attacked by a desperado? Certainly desperados would not wait for him to take up arms.

Another interpretation possible is that—"when religion is interfered with, when there is confusion caused by exigencies of time, *i.e.*, when things have become unsettled on the death of a king—one may take up arms; but at other times the necessary protection would be afforded by the king himself."

But in reality the king cannot spread out his hands and reach every individual person in the kingdom. There are some desperados who attack even the boldest and the most trusted officers of the king; but they fear persons carrying arms.

For these reasons it is right that one should carry arms at all times.

The question arising—are arms to be carried only for the purpose of striking fear in the minds of people?—the answer is 'no,'—'*if one strikes in the cause of right, he does not incur sin*';—*i.e.*, what is permitted extends up to *striking*.

What Āpastamba (1.10.6) has declared—'The Brāhmaṇa shall not take up a weapon even for the purpose of testing it'—prohibits the *raising* of weapons, when none of the mentioned occasions is present, and not the *carrying* of them; because weapons are unsheathed, when they are tested.

'*When religion is interfered with,*'—when the performance of sacrifices and other religious rites is obstructed by some men.

'*When there is confusion among the castes*'—absence of all restraint, admixture of castes, and so forth.

'*Caused by the exigencies of time*,'—such as the death of the king, and such other calamities. On all these occasions one shall carry arms for the protection of his property and family.

Others hold that on the occasions stated, arms may be carried for the sake of other people also;—says Gautama (21. 19)—'Also when some one is striking a weaker man, if he is able to rescue him.'

Interference with religious rites, and confusion of castes having been already mentioned as occasions for taking up arms, the author proceeds to mention other occasions also—'*In his own defence*'—*i.e.*, for defending his own body, wife, children and property,—*against all kinds of danger*—this is what is signified by the preposition '*pari*' in the term '*paritrāṇē*';—'*if one strikes, he incurs no sin.*'

'*In cases of hindrance of sacrificial fees*,'—when other people are taking away the sacrificial fee set up in connection with a performance,—then one must fight, on that account.

Others construe the phrase to mean 'when there is a strife for sacrificial fees';—*i.e.*, if some trouble arises over them.

'*In the case of outrage upon*'—insult, ill-treatment of,—'*women and Brāhmaṇas*,'—where modest women are being forcibly outraged, or killed; or where a Brāhmaṇa is being killed by some people,—'*if one strikes*' with the sword or some such weapon, '*he incurs no sin.*' That is, this involves no transgression of the prohibition of causing injury to others.

If there was no prohibition, one might do as he liked; but when we look at other injunctions and ponder over the declaration of Gautama—'One should take up arms when a weaker person is being struck, if he is able to rescue him,'—we understand that one must strike, under the circumstances. But if one fears that he may be struck back, then he might ignore (what is happening to others), in accordance with the maxim that 'one should guard himself against all dangers.'—(348-349).

VERSE CCCL

WITHOUT HESITATION ONE SHOULD STRIKE AN APPROACHING DESPERADO,—BE HE A PRECEPTOR, A CHILD, OR AN AGED MAN, OR A HIGHLY LEARNED BRĀHMAṆA.—(350)

Bhāṣya.

The author further points out that in one's own defence a man should always fight.

That man is called a '*desperado*' who is intent upon destroying one's body, property, wife or children. Such a man one '*should strike without hesitation.*'

The mention of the '*preceptor*' and the rest is purely by way of a commendatory declamation; the sense being—'when even such persons deserve to be struck, what of others?' As a matter of fact, in the case of the persons named, there is to be no killing, even though they be desperados; since from what has been said under the text—'He shall never offend the teacher who explained the Veda, etc.' (4.162)—it is clear that the striking of the preceptor is forbidden, even if he do harm.

It may be possible to construe the term '*gurum*' with '*ātatāyinam*';—but in that case the two terms would mean 'the great desperado'; so that the striking of desperados who are not 'great' would become precluded;—why?—because there is no other text (that would enjoin *striking* in their case).

"But there is the next verse—'there is no sin in killing a desperado,' which permits the killing of all desperados in general."

Not so; because we do not find any injunctive word in the next verse, which, on that account is best taken as a declamatory supplement to the previous injunction (contained in the present verse).

The revered teachers have declared as follows :—Though, in reality, the injunction contained in the text is that 'one should strike the desperado,' and all the rest is merely declamatory,—yet it has to be taken as sanctioning the striking of the preceptor and other persons mentioned. Because the mere 'malefactor' (who is mentioned in 4.162, as not to be offended) is something quite different from the 'desperado';—one who inflicts an ordinary injury, which does not involve any serious harm to the body, etc., is the 'malefactor'; while the 'desperado' is something totally different;—being described in the following words.—'He who has lifted the sword, who is going to strike with poison or fire, who has raised his hands for the purpose of pronouncing a curse, who is going to kill by means of magic spells, who backbites against one to the king, who violates one's wife, who is ever intent upon finding fault with one,—all these should be regarded as *desperados*.'

Some people hold that—"from the use of the word '*approaching*' in the text it would seem that the person who is rushing forward with uplifted sword, with a view to strike him, or one who is *going* to take away his wife, should be struck;—but when the injury has *been done*, he should ignore it."

But this is not right; since in the next verse we find the phrase '*openly or secretly*,' from which it is clear that the man who *has done* the harm, and he who is *going to do it*, both stand on the same footing. Hence the term '*approaching*' must be taken as purely descriptive; whether he 'approaches' *for doing harm*, or *after having done harm*,—he is to be struck, because he is a '*desperado*; for the mere fact of his *having done* the act does not deprive him of the character of a 'desperado.' Further, the present text does not sanction the *striking* in one's own defence only (in which case alone the above-mentioned meaning of the epithet would be applicable); since that has been already provided for in the foregoing verse.—(350)

VERSE CCCLI

NO EVIL OF ANY KIND ACCRUES TO THE SLAYER FOR KILLING A DESPERADO, EITHER OPENLY OR SECRETLY; AS IT IS ONLY FURY RECOILING UPON FURY.—(351)

Bhāṣya.

'*No evil of any kind,*'—*i.e.*, no sin, no punishment, no expiatory rites.

'*Openly*'—in the presence of other people ;—'*secretly*' by administering poison, etc. ;—*i.e.*, by whatever means.

'*Fury*'—the deity of anger—'*recoils upon Fury*' ;—so that there is no relation of 'slayer' and 'slain' between the two *persons*; since it is the desperado's *anger* that is killed by the *anger* of the other person.

This is purely declamatory; being analogous to the following speech of the person who is seeking for gifts and says—'Who will give to me? I am not the *receiver*, nor you the *giver*; so that there would be nothing wrong in the acceptance of the gift.'

In connection with the desperado mentioned in this text, the author has not laid down any penalties that should be inflicted upon him for committing an act of violence. That has got to be found in the section on 'Hurt'; it is something over and above it that has been laid down here, in view of his being the 'worst offender'; as said above (345).—(351)

Bhāṣya.

'*Conversation*'—talking; one who is found to be doing this;—if he happens to be one who has been '*previously accused of*'—blamed for committing—'*such offences*'—of having a love-intrigue with that woman,—*i.e.*, if the man is of unsteady character, and has been already seen to be carrying on an intrigue with her,—or has been suspected of doing so;—'*secretly*,'—in some secret place, or (as some people explain) in a place where such conversation is forbidden;—in the case of such a person, even if the conversation held with another's wife be one bearing upon some business, he should be made to pay the '*first amercement*.'—(354)

VERSE CCCLV

IF, HOWEVER, HE IS ONE WHO HAS NOT BEEN PREVIOUSLY ACCUSED, AND CONVERSES WITH HER FOR SOME GOOD REASON, HE DOES NOT INCUR ANY GUILT; AS IN HIS CASE THERE HAS BEEN NO TRANSGRESSION.—(355)

Bhāṣya.

If however the man is one who has not been previously accused or suspected, and if the conversation is found to be one bearing upon business, then there is no guilt, as in his case there is no transgression.

But even though not previously accused, if he converses without any business, he becomes liable to the aforesaid punishment.—(355)

VERSE CCCLVI

HE WHO CONVERSES WITH 'ANOTHER'S WOMAN' AT A WATERING PLACE, OR IN A WILDERNESS, OR IN A FOREST, OR AT THE CONFLUENCE OF RIVERS,—INCURS THE GUILT OF 'ADULTERY.'—(356)

Bhāṣya.

Though 'the wife of another man' has been already mentioned as forming the subject-matter of this section, the verse contains the term '*another's woman*,' with a view to indicate that the prohibition does not apply to one's own mother or sister or preceptor's wife or other relations; for though these also are included within the category of 'the wife of another person,' yet they are not called 'another's woman.'

'*Tīrtha*,' 'watering place,' is that place where people go for the purpose of fetching water from rivers, tanks and other reservoirs. Such a place is generally deserted; as none except one desiring water goes near the place; and as a rule it is places like this that are appointed rendezvous for lovers' meetings,—the understanding being 'come to such and such a place, where I shall come without being suspected of anything wrong; as people will think that I have been waiting here for getting water or for the purpose of performing my ablutions, etc., while if I were to go to another place, people would suspect why I was waiting there.' It is for this reason that conversation at watering-places has been forbidden.

'*In a wilderness*'—a deserted spot outside the village; or one that is surrounded by hedges, thickets, trees and creepers.

'*Forest*'—cluster of trees.

'*Confluence of rivers*'—the place where they meet. This also is a place that is generally appointed rendezvous for lovers.

'*He incurs the guilt of adultery*';—'adultery' consists in *making love to other people's wives*.

For this reason, the punishment in this case shall be the same as in that of 'adultery.' This is what is meant.

This prohibition is applicable also to one who has not been previously accused, as also to one who converses on business.

What Āpastamba has declared that—'One should not pass over *a woman without accosting her*,'—refers to places

where other people are present ; and to one of open accosting in the proper form,—such as 'O sister, I salute thee'; and what is meant is that such salutation should be offered without delay.—(356)

VERSE CCCLVII

OFFERING HELP, FLIRTING, TOUCHING OF ORNAMENTS AND CLOTHES, SITTING ON THE SAME BED,—ALL THIS HAS BEEN DECLARED TO BE 'ADULTERY.'—(357)

Bhāṣya.

The '*offering of help*,'—in the shape of clothes, garlands, or articles of food and drink and other things,—to a lady who is not related to one in any way.

'*Flirting*'—joking in ambiguous words, etc.

'*Ornaments*,'—the necklace, the bracelet and so forth, either when all this is actually on her body, or even when held by others, if he touches them, without reason, simply because they belong to that particular lady.

'*Sitting on the same bed*,'—even without actually touching. All this makes him liable to the same punishment.—(357)

VERSE CCCLVIII

IF ONE TOUCHES A WOMAN IN AN IMPROPER PLACE, OR CONDONES IT WHEN TOUCHED BY HER,—ALL THIS, WHEN DONE WITH MUTUAL CONSENT, HAS BEEN DECLARED TO BE 'ADULTERY'—(358)

Bhāṣya.

'*Improper place*,' for touching, would be one where the man could pass along without touching the woman ; there would be no harm in large crowds.

Or '*place*' may stand for *part of the body*. There can be no wrong in the man happening to touch the hands, or the shoulder, or the back, when taking down a load from her head: whereas it would be very wrong to touch her lips or chin or breasts and such other parts.

Or, when touched by her, pressed with her breasts for instance, if the man does not resent it, by saying 'do not do this.'

'*By mutual consent*';—the act is wrong only when done intentionally; and not if he touches her during sacrificial and other performances,—when, for instance, the woman hangs by the neck of the man, or when the man touches the woman between her breasts, or when he touches her when taking something from her hands and so forth. This being due to chance,—just like the case where one desiring to fall back upon dry ground, falls in mud,—the parties incur no guilt at all.—(358)

VERSE CCCLIX

In a case of adultery, a non-Brāhmaṇa deserves the penalty ending in death; as the wives of all the four castes are always the most deserving of protection.—(359)

Bhāṣya.

The nature of 'adultery' has been defined. Penalties for it are now laid down.

'*A non-Brāhamaṇa*'—the *Kṣattriya* and other castes.

'*In cases of adultery*'—when adultery has been committed.

'*Of all four castes*'—irrespectively of the high or low caste of the woman concerned.

'*Penalty of death*'—the punishment consisting in striking till death is brought about.

"How is it that the same penalty applies to the case of adultery with a *Brāhmaṇa* as well as a *Shūdra* woman?"

The text adds the next sentence by way of answer to this question—'*For the wives of all castes are the most deserving*

of protection.' Whosoever's wife she may be, she needs to be guarded much more carefully than one's body and property. Since the 'admixture of castes' is the same in both cases, the family of the *Shūdra* is ruined by it, just as much as that of the Brāhmaṇa.

What is meant by the question is this—" what is found here is a mere assertion ; some reason for this should be explained ; now what is this reason ?"

In answer to this the ancients have offered the following explanation :—The penalty here prescribed is not meant to apply to all forms of 'adultery,' but only to that which consists in the chief form of it, consisting in the actual intercourse, which consists in obtaining a sensual pleasure by a particular form of contact. How could the same penalty be inflicted in the case of actual sexual intercourse, as also in that 'conversing at a watering-place' and such places (which also has been declared to be a form of 'adultery')? Hence the conclusion is that the death-penalty is to be inflicted only in the case of a '*non-Brāhmaṇa*'—*i.e.*, a *Shūdra*—committing adultery with a woman of the twice-born castes,—and not in the case of any other person. For it cannot be right to make equal things that are *not* equal. Hence in the case of the forms of 'adultery' described above, the exact penalty has to be determined by the circumstances attending each individual case. For instance, if in a certain case it be found for certain that the 'offering of help' and other approaches were made solely with a view to actual sexual intercourse, the right penalty would be the extreme one of death ; as the case would not stand upon a different footing ; as in both cases the real motive is found to be the same.

It has been asked—" if the extreme penalty is to be inflicted in the ordinary forms of 'adultery,' what would it be in the case of real 'adultery' ?"

But 'real adultery' is not something different. The denotation of the term is not to be fixed by ordinary parlance ; hence it cannot be right to argue that the extreme penalty

is to be inflicted in a case where there is an act which your august self is pleased to call 'real adultery.'

"Adultery with women has been forbidden; hence the question as to how the same punishment is to be meted out in all cases of it should be addressed to the scriptures."

But there is similar prohibition regarding the 'offering of help' and such other acts also.

"Well, in that case, it would follow that in all cases the same expiatory rite would have to be performed."

Why should this be regarded as an undesirable contingency? The contingency would certainly arise if the act concerned were spoken of as 'adultery.' Though in reality the term is applied only to a case where there has been emission of semen, yet punishments are meant to be deterrent, by reason of their causing pain; hence in the case of such acts as the 'offering of help' and the rest, penalty equal to that in the case of actual intercourse has to be inflicted, on the ground that if such acts as 'conversation' and the rest were associated with small punishments, then men would be tempted to repeat them; and by frequent conversations with women, their passion would become whetted; so that falling a prey to the arrows of Cupid, they would not mind the small punishments inflicted by the king, and would commit the act even at the risk of their lives. On the other hand, if at the very first approach, the man is met by a severely deterrent punishment, the little acts would not be repeated, and the real act might be averted.

It is for this reason that it has been considered right to inflict a severe punishment upon those who may just begin to make approaches to the wives of other men.

So far as the present verse is concerned, we find the term '*prāṇānta*,' '*ending* in death,'—which shows that the *beginning* of the penalty would be something else; for unless a thing has a *beginning*, it can have no *end*. The term '*ending in death*' means *that of which death is the end*; *i.e.*, the punishment should go on being inflicted until death comes about. Thus it is that all such punishments as 'confiscation of property,' 'cutting off of limbs' and so forth become included.

Each of these has been found in other cases to constitute a 'punishment' by itself. So that, when a number of punishments have been prescribed, since all these cannot be inflicted for any single crime, the right conclusion is that in the case of a non-Brāhmaṇa committing adultery with a twice-born woman, the highest of those punishments shall be inflicted, and the man shall be put to death. But even in the case of women of lower castes, the death-penalty shall be inflicted in the case of the man committing adultery with an unwilling family-woman whose husband is alive.—(359)

VERSE CCCLX

Mendicants, bards, persons initiated for a rite and craftsmen may converse with women, unchecked.—(360)

Bhāṣya.

'*Mendicants*,'—those living on alms; these may talk to women, in the act of begging, if they are not '*checked*' by their husbands.

Or, the meaning may be that they shall not be checked or forbidden in this.

'*Bards*,'—those who sing the praises of kings.

'*Initiated at a rite*,'—These persons would have to speak to women in the course of the response that they have to make in acceptance of their appointment.

'*Craftsmen*,'—cooks and others.

These should not be prevented even at such places as the watering-place and the like.—(360)

VERSE CCCLXI

One should not converse with the wives of other men, when forbidden. If, on being forbidden, he does converse, he becomes liable to be fined one 'suvarṇa.'—(361)

Bhāṣya.

Some people think that the punishment here laid down is meant for the case where mendicants and the rest first mentioned carry on the conversation, even after being forbidden.

This however is not right. It has been said that these men are not to be forbidden. Then again, how could the fine of a '*suvarṇa*' be imposed upon a mendicant?

Hence the person meant to be fined one '*suvarṇa*' is one who, even though not previously accused, has been forbidden by the woman's husband, and yet goes on conversing with her.—(361)

VERSE CCCLXII

THIS RULE DOES NOT APPLY TO THE CASE OF THE WIVES OF DANCERS AND SINGERS, OR OF THOSE WHO MAKE A LIVING OF THEMSELVES; FOR THESE MEN SECRETLY BRING THEIR WOMEN INTO CONTACT (WITH OTHER MEN), AND TEMPT THEM ON.—(362)

Bhāṣya.

The aforesaid prohibition regarding conversing with women does not apply to the case of '*wives of dancers and singers*';—the term '*chāraṇa*' standing for dancers, singers and other actors.

So also in the case of those '*who make a living of themselves*,'—*i.e.*, those wives who live upon their own beauty;—the term '*jīviṣu*' qualifying the masculine noun '*dārāḥ*' (wives). Or 'themselves' may stand for 'wives,'—the wife being half the self of the man; and the term stands for *those who live upon their wives*;—*i.e.*, *those who condone the presence of paramours for their wives.*

'*Bring into contact*,'—unite their wives with other men.

'*Secretly*,'—*i.e.*, not in the open market-place. These women differ from public prostitutes in this that they carry on their intrigues within their own homes.

'*Tempt them on*,'—egg them on to actual sexual intercourse; enticing the men by means of glances and jokes.

'*Bringing into contact*' implies *connivance*, while '*tempting*' implies leading on to the actual act.

Or, the meaning may be that 'they bring into contact, unite, their own wives, and seduce, through their wives, the wives of other men'; *i.e.*, they make their wives act as prostitutes as well as go-betweens.—(362)

VERSE CCCLXIII

YET HE WHO SECRETLY CARRIES ON CONVERSATION WITH THESE WOMEN, OR WITH MAIDSERVANTS DEVOTED TO ONE MASTER, OR WITH FEMALE ASCETICS, SHOULD BE MADE TO PAY SOMETHING.—(363)

Bhāṣya.

'*Secretly*'—not in public, but in a solitary spot;—he who carries on conversation with the women of dancers and singers, —should be fined '*something*'—*i.e.*, some small amount of gold—the thirtieth part of a '*suvarṇa*' or some such thing; the exact amount being determined in conformity with the caste of the party concerned and the circumstances attending each case. The reason why some punishment is necessary lies in the fact that the women concerned are not entirely public women,—it is with the permission of their husbands that they admit paramours. It is on account of this fact of their not being independent that they should be approached, not directly, but through a go-between; for the purpose of ascertaining if the mesalliance has the husband's sanction.

Holding conversation with them *openly* however,—when for instance, they are dancing and singing, and they are questioned regarding the tune or the timing and other details of the song,—this is not forbidden.

'*Maidservant*' is *slave-girl*; acquired by any one of the seven methods of acquiring slaves.

'*Devoted to one master*,'—*i.e.*, those that are the kept mistresses of any one man.

In the case of these last there is some ground for other kinds of punishment also.

"Is the term 'maidservant' meant to be a relative term,—meaning the slave owned by a certain master? Or does it denote simply a *servant*, just like such terms as 'cook' and the like?"

In the present context the term is used in the former sense. The meaning being that when some one has intercourse with a slave girl or a prostitute kept by another man,—such woman is punished, just as a king's slave would be. If however the girl has not been 'kept' by any one, then there is no wrong done. As the present text prescribes the punishment to be inflicted for 'adultery' with a woman 'kept' by another man.

We shall explain this in greater detail under the section on division of property.

'*Female ascetics*,'—those having no guardian to look after them, *e.g.*, *Shilamitrā* and so forth (?) These women hide their lascivious tendencies under the cloak of asceticism.—(363)

VERSE CCCLXIV

If a man of equal status violates an unwilling maiden, he deserves immediate death; but if he violates a willing one, he shall not suffer death.—(364)

Bhāṣya.

What is stated here is only by the way.

'*Of equal status*'—belonging to the same caste as the girl.

If he '*violates an unwilling maiden*'—*i.e.*, deprives her of her virginity, through sexual intercourse,—he should be killed on the same day, without delay.

In the case of the willing maiden, there is no real 'violating'; how could there be any possibility of death being

inflicted? We shall explain later on what should be done in such a case.

Though in the present text only the man 'of equal caste' has been mentioned, yet from considerations of the castes of the parties concerned, death also would be inflicted in certain cases.—(364)

VERSE CCCLXV

IF A MAIDEN APPROACHES A SUPERIOR PERSON, SHE SHALL NOT BE MADE TO PAY ANYTHING; IF HOWEVER SHE COURTS AN INFERIOR PERSON, SHE SHALL BE KEPT CONFINED IN THE HOUSE.—(365)

Bhāṣya.

If a maiden '*approaches*'—has sexual intercourse with—'*a superior person*'—one whose caste, wealth, character, learning is superior to that of her father's family,—she shall not be fined anything.

In as much as the girl is never her own mistress, the punishment would fall upon her guardians, father and others; and it is the punishment that is precluded here.

'*Inferior*,'—in caste or other things.

'*Courts*,'—tries to have intercourse with.

'*Confined*,'—not being allowed to take part in any amusements, and guarded by attendants.

She shall be made to live in her father's house, till she gets rid of her love-longings. If however she continues to have her love centred in the inferior persons, then she should be kept confined till her last breath.—(365).

VERSE CCCLXVI

AN INFERIOR MAN COURTING A SUPERIOR MAIDEN DESERVES DEATH; HE WHO COURTS A MAIDEN OF EQUAL STATUS, SHALL PAY THE NUPTIAL FEE, IF HER FATHER SO WISHES.—(366).

Bhāṣya.

It has been said that in the case of violating an unwilling maiden, all men, be they superior or inferior, should suffer death, with the sole exception of the *Brāhmaṇa*; and the present verse, they say, lays down the law relating to the violating of a willing maiden.

'*Superior*,'—in beauty, youth, caste and other points.

'*Inferior*,'—the lowest.

The man is not to be killed if there is any equality between the parties.

If a man approaches a willing maiden who is equal to him in status,—he shall pay to her father the nuptial fee, as is done in the case of the '*Āsura*' form of marriage. But if the father does not desire to receive the fee, that amount shall be paid as fine to the king.

"In as much as this would be a case of '*Gāndharva*' marriage—marriage by mutual consent,—it cannot be right to inflict any punishment."

Who has said that there is to be no punishment in the case of marriage by mutual consent? In fact such an act would not be one befitting a chaste woman; nor would it be regarded as 'marriage,' for the simple reason that it would not have a sacramental character. As for the declaration in the Mahābhārata, in connection with Shakuntalā, to the effect that 'the *Gāndharva* is a form of marriage, without fire and without mantras,'—this was an assertion made by Duṣyanta while he was suffering from the pangs of love. Further, mere 'willing intercourse' does not constitute 'marriage.' Marriage has been classified under eight heads on the basis of different methods used for taking a wife; and it does not mean that there are eight kinds of marriage. So that (in the *Gāndharva* marriage also), the due selection of the bridegroom (even though he has been already chosen by the bride) and the subsequent rites have got to be performed.

Or, the '*Gāndharva*' may be accepted as a 'marriage' only in the case of a maiden after puberty; and before that, the man is to pay the nuptial fee or a fine.

The question arises—what is to be done with the maiden?

The answer is that she shall be given to that same man. But if she has ceased to love him, she may be given to another man. But in either case the 'nuptial fee' has got to be paid, by way of compensation for the single act of intercourse.

If the man has ceased to love the girl, he shall be forced to accept her.—(366)

VERSE CCCLXVII

BUT IF ANY MAN WANTONLY DEFILES A MAIDEN THROUGH SHEER AUDACITY, HIS FINGERS SHOULD BE INSTANTLY CLIPPED OFF, OR HE SHOULD BE FINED SIX HUNDRED. —(367)

Bhāṣya.

Even though the maiden may be willing, if her parents and other relatives are close by, and their presence is not heeded by the man who, *through sheer audacity*, relying upon his force and having the idea 'who can do anything to me?'—and relying solely upon the maiden's love for him—'*defiles her*,'—the root '*kṛ*' which has many meanings, stands here for the act *of defiling*, then '*his fingers should be clipped off*';—or '*he should be fined six hundred.*'

Others have held that this verse sums up what has been said (under 364) regarding the violating of an unwilling maiden, to be punished with 'death.' 'Killing' in this connection stands for corporal punishment—beginning with beating and ending with actual killing; and what the present text means is that if a man defiles a maiden of a low caste, he shall not be *killed*.—he shall have only his fingers clipped off.

VERSE CCCLXVIII

A MAN OF EQUAL STATUS DEFILING A WILLING MAIDEN SHALL NOT SUFFER AMPUTATION OF FINGERS; HE SHOULD BE MADE TO PAY THE FINE OF TWO HUNDRED WITH A VIEW TO PREVENT REPETITION.—(368)

Bhāṣya.

Inasmuch as the foregoing verse also pertains to the case of a willing maiden, the penalty therein laid down applies to the case where the man defiles her through sheer audacity; while in a case where he does it by stealth, secretly like a thief, the punishment shall consist of the fine of two hundred, without the amputation of the fingers.

Or, the text may refer to the following case—

If the maiden happens to be in love with a certain man, and having had intercourse with him has lost her virginity,—then since the girl was willing, the man, for the crime of defiling her, shall suffer the penalty here laid down.

Or, the '*defiling*' meant here may be taken as the *touching of the hand* and some such part of the body: the man's motive being—'if people see me touching her hand, they will think that she loves me and then no one else will seek for her hand, and she shall be mine.'—(368)

VERSE CCCLXIX

IF A MAIDEN POLLUTES ANOTHER MAIDEN, HER FINE SHALL BE TWO HUNDRED; SHE SHALL ALSO PAY THE DOUBLE OF HER NUPTIAL FEE AND SHALL RECEIVE TEN LASHES.—(369)

Bhāṣya.

Either through childishness, or through jealousy for her greater beauty, if a maiden pollutes another maiden, then she should be made to pay two hundred; and also the double of her nuptial fee.

What is the amount of this fee ?

It shall depend upon the beauty of the girl, or upon her fortune and other qualities.

'*Lashes*'—strokes of rope or creeper.—(369).

VERSE CCCLXX

But if a woman pollutes a maiden, she deserves immediate shaving off, or the amputation of two fingers, and also being carried by a donkey.—(370)

Bhāṣya.

If a woman destroys the virginity of a maiden, she shall have her head shaven off ; or undergo amputation of her fingers.

'*Being carried by a donkey*'—in the case of shaving. Some people hold that the different penalties are laid down in view of the caste of the girl, and the caste of the polluter ;—the three penalties applying to the three castes Brāhmaṇa and the rest :

But there being no authority for such a view, it should be ignored.—(370)

VERSE CCCLXXI

If a woman, proud of relations and her qualities, passes over her husband, the king shall have her devoured by dogs in a place frequented by many.—(371)

Bhāṣya.

'*Passing over*' means neglecting the husband and going over to another man ; if a woman does this through '*pride*,'—the pride consisting in the idea,—'I have several relations who are powerful and wealthy, and I myself am possessed of all the excellent qualities of a woman, such as beauty and love,—why then should I mind my character ?'

Such women the king shall get devoured, till they die.

'*Place*'—spot; where many people congregate, such as road-crossings, market-squares and so forth.—(371)

VERSE CCCLXXII

THE OFFENDING MALE HE SHOULD MAKE TO LIE DOWN UPON A REDHOT IRON BED; THEY SHALL PUT WOODEN-LOGS OVER HIM, SO THAT THE SINNER MAY BE BURNT.—(372)

Bhāṣya.

The paramour of the woman spoken of in the preceding verse shall be burnt to death on an iron-bed made hot like fire.

Over him thus lying on the bed the executioners shall throw logs of wood, till he dies by the heat and by the strokes of the logs.—(372)

VERSE CCCLXXIII

IF THE CONVICTED MAN IS ACCUSED AGAIN WITHIN A YEAR, HE SHALL BE PUNISHED WITH A DOUBLE FINE. THE SAME ALSO IN THE CASE OF INTERCOURSE WITH A 'VRĀTYĀ' OR A 'CHĀṆḌĀLĪ.'—(373)

Bhāṣya.

'*Convicted*'—charged of the crime; when a man has committed adultery with a woman and has been punished, he is said to be '*convicted.*'

If such a man, within a year, commits adultery with the same woman, then the man being thus convicted and accused again, the fine shall be double.

Another reading is '*samvatsarābhishastasya*' in the compounded form. In this case also the passage may be construed somehow.

'"*The same also in the case of intercourse with a "vrātyā,"*'—that is, when accused again.

Such cannot be the meaning of the verse, we say. In the case of the intercourse in question, there are bound to be various grades of punishment, in the shape of the 'lowest,' the 'middle' and the 'highest' amercement. So that it is not clear the 'double' of which one is meant.

What therefore is meant by 'the same' is that the fine in the case of intercourse with the '*vrātyā*' is to be 'the same' as that in that of the '*chaṇḍālī*'; and for the latter case, the fine of 'one thousand' has been prescribed under 385, below.

'*Vrātyā*.'—'*Vrāta*' means *host*, *crowd*; so that the '*vrātyā*' would be *one who has intercourse with a large number of men*; the term being explained etymologically as '*vrātena charati*'; or it may be explained as '*vrātam arhati*,' the *ya* in the middle coming in in accordance with Pāṇini, 5.1.66. Who would be the woman that would be '*vrātyā*' in this latter sense? The unchaste woman who has intercourse with several men; for it is only she that can be said to be *fit for a host*,' ('*vrātam arhati*').

Or, the term '*vrātyā*' may stand for the village slave-girl, who has several masters.

Some people explain '*vrātyā*' as meaning *unmarried*.

But according to this view the term would not be held to be used in its primary sense. For the writers on *Smṛti* have used the term in the sense of 'those who have fallen off from the Sāvitrī'; and this cannot be applicable to women.

"But for the woman marriage has been declared to be the substitute for *upanayana* (initiation into Sāvitrī). So that she who has not been married, would be a '*vrātyā*.'"

But in that case the term would be used in the figurative, not the primary, sense. Even though the term '*upanayana*' has been used in the sense of *marriage*, which is *not-upanayana*, yet when it is declared that 'the man who is devoid of the *upanayana* is called a *vrātya*,' it is never understood to mean that the man *devoid of marriage* is meant. Just as when it is said that 'this place is without a lion,' it is never understood to mean that 'the place is without the boy,'—even though the term 'lion' may have been figuratively used for the 'boy.'

"In the latter case there is possibility of the primary meaning of the term 'lion' being applicable, but in the case in question, there is no such for the term '*upanayana*.'"

Figurative use does not depend entirely upon the impossibility of the primary meaning; it stands in need of other attendant circumstances also.

Then again, there is no doubt that the term '*upanayana*' in the sense of *marriage* can be only figurative; but what reason can there be for regarding the term '*vrātyā*' also (in the present text) as figurative? Even though it be figurative, it will be difficult to explain this as being based upon the fact of there being no marriage.

Further, it may be supposed that the woman born of a '*vrātya*,' is also a *vrātyā* on the analogy of the bird born of a *crow* being a *crow*, and that born of the *kite* being a kite. And the term '*vrātyā*' would be applicable to the child by its relationship to the '*vrātya*' (the nominal affix denoting this relationship).

"But the wife of the *vrātya* man cannot be called a '*vrātyā*,' even though she bear a *relationship* to him."

But in the case cited the difficulty would be due to the case coming under Pāṇini's Sūtra 4-1-18 (by which the feminine form would be '*vrātyī*'). The case of 'the child born of the Vrātyā woman' however does not come under this *Sūtra*.

Thus then, if the term '*vrātyā*' is to be taken in a figurative sense, it is to be understood to stand for 'the woman born of a *vrātyā* woman.' If on the other hand, the term is used in its primary sense, then it must mean '*she who is fit for a vrāta* or crowd,'—The '*unmarried woman*' on the other hand does not come in either as the primary or the figurative meaning. Further, there is no time fixed for the marriage of women, by transgressing which they would become *vrātyā* (in the sense in which the man transgressing the time-limit for *Upanayana* becomes known as *vrātya*). As for the rule that girls should be married *before puberty*,—its transgression also is permitted by the sanctioning of the

custom of '*Svayamvara*,' 'self-choice,' which can be done only when a woman is of a sufficiently advanced age, and hence has attained puberty. And further, if no girl were to be married after puberty, several girls would have to remain in their father's house till death.—(373).

VERSE CCCLXXIV

A SHŪDRA HAVING INTERCOURSE WITH A TWICE-BORN WOMAN, PROTECTED OR UNPROTECTED, SHALL BE DEPRIVED OF HIS LIMB AND HIS WHOLE PROPERTY, IN THE CASE OF THE UNPROTECTED WOMAN, AND OF EVERYTHING IN THAT OF THE PROTECTED.—(374).

Bhāṣya.

'*Shūdra*'—*i.e.*, down to the *Chaṇḍāla*;—'*having intercourse*'—sexual—'*with a twice-born woman*';—'*protected or unprotected*'—by her husband,—shall be punished according to law.

What shall be the punishment ?

If he has intercourse with an unprotected woman, he shall be deprived of his '*limb*,' and also of '*his whole property*.'

As to the question regarding what he is to be deprived of, the answer is provided by the epithet '*aṅgasarvasvi*,' which mentions the '*limb*' and the '*whole property*'; especially as nothing else is mentioned, and no other thing is specified.

The limb of which he is to be deprived is that with which he has offended.

If he has intercourse with a '*protected*' woman, '*he is to be deprived of everything*,'—not of only one limb, but of the whole body.

The present verse lays down the amputation of the limb, the confiscation of his entire property, and the inflicting of death, as forms of punishment,—the sense being that punishment should be inflicted on the man. Says Gautama (12. 2):—In the case of intercourse with women, there should be amputation of the generative organ and also the confiscation of his entire property,—if she happens to be protected'—(374)

VERSE CCCLXXV

The Vaishya should be fined his entire property after a year's imprisonment; the Kṣattriya is to be fined one thousand, and be shaved with urine.—(375)

Bhāsya.

The confiscation of his entire property is the penalty prescribed for the Vaishya. Though all the twice-born castes are mentioned together here, yet the penalty here laid down is not meant for the case where the *Vaishya* has intercourse with a woman of the same caste; it is meant for cases of intercourse with *Brāhmaṇa* and *Kṣattriya* women.

Similarly in the case of the *Kṣattriya* having intercourse with a *Brāhmaṇa* woman, the punishment consists in a fine of one thousand, and also '*shaving with urine*,'—*i.e.*, the urine of the ass being used in place of water.

Others explain the verse as follows:—Since no other caste is mentioned, the punishment is meant for the case where the Vaishya has intercourse with a woman of the same caste,—the additional punishment being due to his *keeping her for a year*. The sense is that if he keeps her for a year then his punishment shall be as here laid down.

As a matter of fact however, the former explanation appears to be more reasonable. It cannot be argued against it that—"the same punishment cannot rightly apply to cases of intercourse with equal, superior and inferior castes;" because it has been declared that "the wives of all castes are to be guarded with the greatest care.'—(375)

VERSE CCCLXXVI

If the Vaishya and the Kṣattriya have intercourse with an unprotected Brāhmaṇa woman, the Vaishya should be committed with five hundred and the Kṣattriya with one thousand.—(376)

Bhāsya.

'*Unprotected*'—has been explained as one who has lost her chastity and has no one to look after her.

For having intercourse with such a woman, he shall '*commit*' the Vaishya '*with five hundred.*' The verb *to commit* is to be taken in the sense of *fining*, from the context; the meaning is that 'he shall be fined five hundred.'

The term '*pañchashatam*' is to be expounded as 'he who has five hundred,'—the Bahuvrīhi compound denoting *possession*.

The meaning is that the king should so commit him that *he gets five hundred.*

"Does this mean that if the man has more than five hundred, the excess shall be confiscated?"

Not so, we reply; for in that case if the man has only five hundred, then for him there would be no punishment prescribed.

"What then is the meaning?"

The expression '*he shall be committed with five hundred*' means that he is to be punished with a fine consisting of five hundred. That such is the meaning is indicated by the context.

Similarly, '*the Kṣattriya is to be committed with one thousand*';—*i.e.*, his punishment shall consist of one thousand; and *not* that his property at home shall be one thousand.

The expression '*aṅgasarvasvī*' (in verse 374) is to be explained similarly to mean that the king shall so act that the man's punishment consist of his limb and his whole property.

The penalty for the *Kṣattriya* is severer, because it is his duty to guard people; so that if he offends, his guilt is the greater.—(376)

VERSE CCCLXXVII

But both these, when offending against a protected Brāhmaṇa woman, should be punished like a Shūdra, or burnt in a fire of dry grass.—(377)

Bhāṣya.

'*Both these*,' *i.e.*, the *Vaishya* and the *Kṣattriya*—'*offending against*'—*i.e.*, having sexual intercourse with—a protected Brāhmaṇa woman—'*should be punished like the Shūdra*,'—*i.e.* 'deprived of everything, if the woman is protected' (as declared in 374).

'*Or he should be burnt in a fire of dry grass*,'—the term 'or' is meant to indicate option in the *method of killing*, and not in regard to the *killing* itself. Because in the case of the protected Brahmaṇa woman, there is no other penalty for the *Shūdra* except death.—(377)

VERSE CCCLXXVIII

THE BRĀHMAṆA WHO HAS INTERCOURSE WITH A PROTECTED BRĀHMAṆA WOMAN BY FORCE SHOULD BE FINED ONE THOUSAND; HE WHO HAS CONNECTION WITH A WILLING ONE, SHOULD BE FINED FIVE HUNDRED.—(378)

Bhāṣya.

Even though one has lost her chastity, if the woman continues to be protected by her father, brother or relatives,—and a Brāhmaṇa has intercourse with her by force, he should be made to pay one thousand.

If however the woman is protected and still chaste, then the man is to be banished and branded, in addition to the fine.

Even if the word 'protected' be taken to mean *chaste*, the Brāhmaṇa would be absolved by paying a thousand;—'banishment' and 'branding' being the general punishment laid down for all cases of immoral intercourse with other women.—(378)

VERSE CCCLXXIX

TONSURE HAS BEEN PRESCRIBED AS THE DEATH-PENALTY FOR THE BRĀHMAṆA; FOR OTHER CASTES THE PENALTY WOULD BE ACTUAL DEATH.—(379)

Bhāṣya.

In cases where 'death' has been laid down for the *Kṣattriya* and other castes, it is to be 'tonsure' for the Brāhmaṇa. For instance, for adultery, the non-Brāhmaṇa deserves the death-penalty,—the general rule being that 'the male shall be flayed.'

The term '*prāṇāntaka*' is to be explained as *prāṇānām antam gachchhati* or '*prāṇānāmant m karoti*,'—*that which brings about the end of life*; the form being formed with the '*ṇvul*' affix.

Others read '*prāṇāntika*';—in which case the affix is '*ṭhañ*,'—the meaning being 'relating to death.'

'*For the other castes*'—the *Kṣattriya* and others, except the *Brāhmaṇa*,—'*it is to be actual death*.'

Putting to death having already been prescribed before, the present text has been taken as serving the purpose of putting forward the injunction of tonsure and the fine of one thousand, as supplementary to the former injunction. Otherwise, in as much as the death penalty has not been prescribed for the *Brāhmaṇa*, what would be the occasion for declaring that 'Tonsure is the death-penalty for the Brāhmaṇa?'

It might be argued that the possibility of death-penalty for the Brāhmaṇa is indicated by the general law that 'the man should be flayed.'"

But in that case the substitute should have been put forward in that same connection; so that the connection of the two could be clearly perceived.—(379).

VERSE CCCLXXX

VERILY HE SHALL NOT KILL THE BRĀHMAṆA, EVEN THOUGH HE BE STEEPED IN ALL CRIMES; HE SHOULD BANISH HIM FROM THE KINGDOM, WITH ALL HIS PROPERTY AND UNHURT.—(380).

Bhāṣya.

'*In all crimes.*'—What is said here should not, on the strength of context, be taken as applying to 'adultery' only; it pertains to other crimes also.

'*Even*'—This term means that even though the Brāhmaṇa may have committed all the crimes simultaneously, he should never be made to suffer the death-penalty.

"What then should be done to the criminal?"

The king shall '*banish him*'—send him away—'*from the kingdom*'—out of his realm;—'*with all his property*'—along with all his belongings;—'*unhurt*'—in body.

"If the property even is not to be confiscated, what would be the punishment to the Brāhmaṇa?"

Some people say that when the text distinctly says that the man is to be banished 'with his property,' it is clear that it forbids the imposition of fine. Others however explain the words 'banished with his property' to mean that he shall be banished after all his property has been confiscated.—(380)

VERSE CCCLXXXI

There is no greater crime on earth than the slaying of a Brāhmaṇa; the king shall, therefore, not even think of his death in his mind.—(381)

Bhāṣya.

This is a declamatory supplement to what has gone before.

Than the slaying of the Brāhmaṇa, there is no '*greater crime*,'—sin leading to greater suffering.

The Ablative in '*vadhāt*' is to be explained by supplying the term '*aṅgaḥ*.'

For this reason, the king should not even think of inflicting either death or amputation on the *Brāhmaṇa*.—(381)

VERSE CCCLXXXII

IF A VAISHYA APPROACHES A PROTECTED KṢATTRIYA WOMAN, OR THE KṢATTRIYA A VAISHYA WOMAN,—BOTH THESE DESERVE THE SAME PUNISHMENT AS THAT IN THE CASE OF AN UNPROTECTED BRĀHMAṆA WOMAN.—(382)

Bhāṣya.

It has been said above (in 376) that in the case of approaching an unprotected Brāhmaṇa woman, the Vaishya 'should be committed with five hundred and the Kṣattriya with one thousand.' So in the present case also the fine for the *Vaishya* would be five hundred.

The heavier punishment for the *Kṣattriya* is justified on the ground that being entrusted with the task of protecting the people, if he takes to offending against them, he incurs a great sin.—(382)

VERSE CCCLXXXIII

THE BRĀHMAṆA HAVING INTERCOURSE WITH THE SAID TWO, WHEN PROTECTED, SHOULD BE MADE TO PAY A FINE OF ONE THOUSAND; THE FINE FOR THE KṢATTRIYA AND THE VAISHYA APPROACHING A SHUDRA WOMAN, SHOULD BE ONE THOUSAND.—(283)

Bhāṣya.

The Brāhmaṇa approaching the protected *Vaishya* or *Kṣattriya* woman should be fined one thousand; and of course 'banishment' and 'branding' remain as the fixed forms of punishment (in all cases of adultery).

For approaching a Shūdra woman, the *Kṣattriya* and the *Vaishya* should be fined one hundred.

'*Sāhasra*' is the same as '*Sahasra*,' the affix '*aṇ*' having the reflexive force. Or '*Sāhasra*' may be explained as *that*

which consists of a sahasra or thousand; the '*aṇ*' affix having the force of the possessive.—(383)

VERSE CCCLXXXIV

IN THE CASE OF THE VAISHYA APPROACHING AN UNPROTECTED KṢATTRIYA WOMAN, THE FINE SHALL BE FIVE HUNDRED; BUT THE KṢATTRIYA MAY SUFFER TONSURE OR THE FINE.—(384)

Bhāṣya.

For the *Vaishya* there shall be a fine of five hundred, if he has intercourse with an unprotected *Kṣattriya* woman.

For the *Kṣattriya* also there shall be the same penalty; or he may suffer 'tonsure'—shaving of the head with ass's urine.

The same punishment is applicable to both the *Vaishya* and the *Kṣattriya* for having intercourse with an unprotected *Vaishya* woman.—(384)

VERSE CCCLXXXV

THE BRĀHMAṆA, APPROACHING AN UNPROTECTED VAISHYA OR KṢATTRIYA WOMAN, SHOULD BE FINED FIVE HUNDRED, AND ONE THOUSAND FOR APPROACHING A WOMAN OF THE LOWEST ORDER.—(385)

Bhāṣya.

This is the punishment for the Brāhmaṇa having intercourse with a *Vaishya* or a *Kṣattriya* woman.

'*Of the lowest order*'—*i.e.*, the *Chaṇḍāla*, the *Shvapacha* and so forth. In their case the fine shall be one thousand.

The law relating to the fine of thousand '*paṇas*' is briefly as follows:—For the Brāhmaṇa approaching a protected woman of any of the four castes, the fine shall be one thousand; and in addition to this for having intercourse with the

wife of a Vedic Scholar there shall be both banishment and branding, while in other cases there shall be banishment only. We presume this to be the case with the wife of a Vedic Scholar on the ground that the expiatory rite prescribed in connection with such intercourse is of a serious character.

For intercourse with an unprotected woman, there shall be a fine of five hundred in addition to banishment and branding.

Though the unprotected woman may be spoken of as 'another man's wife,' on account of her having undergone the marriage-rites, yet, in reality, when she becomes loose in her character, she practically ceases to belong to her husband.

For the non-Brāhmaṇa, there is death-penalty if he approaches by force a protected woman: for approaching a willing woman, he shall be fined one thousand, and also banishment and branding;—as laid down under 376 above. —(385)

XLVII. Summing up of the Sections relating to Criminal Law

VERSE CCCLXXXVI

THAT KING IN WHOSE TOWN THERE IS NO THIEF, NO ADULTERER, NO DEFAMER, NO CRIMINAL, NO ASSAULTER,—ATTAINS THE REGIONS OF INDRA.—(386)

Bhāṣya.

That king in whose '*town*'—kingdom—there is no thief, reaches the '*regions of Indra*'—heaven.

'*No adulterer*'—who has no intercourse with a married woman, or to one married a second time. The mention of the '*woman*' indicates that the prohibition applies to the case of all such women as are not one's own wife, and are not related to him.

'*Defamer*'—the man who commits the three kinds of defamation.

'*Criminal*'—already described above.

'*Assaulter*'—who commits physical violence.

'*Attains the regions of Indra*'—is to be construed with each of the phrases.

This verse constitutes a hortatory supplement to the injunctions regarding the punishing of thieves and others. —(386)

VERSE CCCLXXXVII

THE SUPPRESSION OF THESE FIVE IN HIS OWN DOMINIONS SECURES TO THE KING PARAMOUNT SOVEREIGNTY AMONG HIS PEERS AND FAME IN THE WORLD.—(387)

Bhāṣya.

'*Paramount sovereignty,*'—lordship over others, independence.

'*Among his peers.*'—the term '*peers*' stands for such kings as are his rivals. The king in question rises to lordship over all these ; *i.e.*, they become subservient to him and obey his wishes.

'*Fame in the world*'—also is brought about.

In both cases it is the 'suppression' that brings about the said result.

The meaning is that people continue to eulogise the king, even though they say that 'he is a very cruel chastiser of the people.'—(387)

XLVIII. Laws relating to Civic Misdemeanours

VERSE CCCLXXXVIII

IF A SACRIFICER FORSAKES AN OFFICIATING PRIEST, AND IF AN OFFICIATING PRIEST FORSAKES A SACRIFICER,—EACH BEING CAPABLE OF DOING THE WORK AND FREE FROM DISQUALIFICATIONS,—THEIR PUNISHMENT IS ONE HUNDRED EACH—(388).

Bhāṣya.

'*Officiating priest*'—a person who performs the several acts in connection with 'sacrificial performances'; *e.g.*, the *Ṛtvik*, the *Hotṛ*, the *Udgātṛ* and so forth.

Though the name 'officiating priest' becomes applicable to the man only after his *appointment*, and continues so till the completion of the rites, yet the law that is laid down here pertains to the forsaking done before the actual *appointment*, and not to that during the performance of the rites that have commenced. And the titles are applied on the ground of past events; that is to say, it is only one who has had previous experience as a priest who has the chance of being chosen again. In fact the title is applied, not only on the basis of previous experience, but also upon hereditary qualifications; as says Nārada—'the man employed previously is self-chosen'; and further, this applies not only to the experience of a single generation, but to the family-traditions of several generations; as has been described in detail in the *Mahābhārata* in the sections dealing with Samvarta and Marutta.

The upshot thus is that those persons should be chosen as officiating priests who belong to the same family members whereof have been chosen in the past by the forefathers of the selector.

This same is applicable to the case of the 'sacrificers' also; the priests also should have recourse to the same sacrificers with whose forefathers their forefathers may have had dealings in the past.

'*Officiating priest*'—the man who has performed the priestly duties, or one who belongs to the family of such a person.

If a man going to perform a sacrifice does not appoint such a priest, but ask some one else.

'*Capable of doing the work*'—of sacrificing; *i.e.*, conversant with the entire procedure.

'*Free from disqualifications*'—*i.e.*, not having any such defect as a defective limb, or being accused of a serious crime and so forth.

If such a qualified priest, on being requested to officiate, refuses to do so, and does not accept the priesthood offered;—when the sacrificer is free from the said disqualifications and is fully learned.

In the case of both these forsakings, there shall be a fine of one hundred. If the priest forsakes the sacrificer he should be made to pay a hundred, and so also the sacrificer, if he forsakes the priest.

This rule is applicable, not only to the case of the sacrificer and the officiating priest, but also to that of the Preceptor and the Pupil. As says Gautama (21.12-13)—'The Priest and the Preceptor are to be forsaken only if they are deficient in learning, or happen to serve an outcast; by forsaking them otherwise one becomes an outcast.'

Some people hold that this law is applicable also to the case of the giver and the recipient.—(388)

VERSE CCCLXXXIX

NEITHER THE MOTHER, NOR THE FATHER, NOR THE WIFE, NOR THE SON DESERVE TO BE FORSAKEN; HE WHO FORSAKES THESE, UNLESS THEY ARE OUTCASTS, SHOULD BE FINED SIX HUNDRED BY THE KING.—(389)

Bhāṣya.

The mother does not deserve to be forsaken,—should not be cast off. 'Forsaking' consists in turning her out of the house, if she has failed in her maternal duties; *i.e.*, if she fails to do what she ought to do in return for what she receives at the hands of her son.

The same explanation applies to the case of the father and the rest also.

The term '*strī*' (woman) stands for the *wife*, as is clear from the fact that the text mentions only relatives.

These should not be forsaken, unless they are outcasts. As regards the mother, Shātātapa has declared that 'to the son the mother never becomes an outcast.'

The 'forsaking' of the outcast wife consists in giving up all intercourse with her and in forbidding her to do household work; but the giving of food and clothing is not forbidden; as it is declared that—'food and clothing should be given to even outcast wives, and these should live near the house.' —(389)

VERSE CCCXC

FOR TWICE-BORN MEN DISPUTING AMONG THEMSELVES REGARDING ANY POINT RELATING TO THE ORDERS, THE KING, DESIROUS OF HIS OWN WELFARE, SHALL NOT DETERMINE THE LAW.—(390)

Bhāṣya.

In regard to the 'duties' of the various orders of the Hermit dwelling in the forests, several disputes arise as to this and not that being the sense of the scriptures.

When these men happen to dispute among themselves, the king shall not, in a hurry, lay down the law; *i.e.*, he should not, in the exercise of his sovereign power, determine what the law on the point is. What he should do and how is going to be explained later on.

By acting in this manner, the king accomplishes his own welfare; *i.e.*, he does not relinquish the injunctions of the scriptures.

In the case of householders, even though they also belong to an 'order,'—yet, the method of laying down the law should be the same as laid down before (and not as declared in the present text, which pertains to the Hermit and the Recluse only).

'*Points*'—*i.e.*, doubtful questions regarding the duties; that this refers to this particular matter of *duties* is indicated by the mention of the 'orders.'—(390)

VERSE CCCXCI

HAVING, WITH THE ASSISTANCE OF BRĀHMAṆAS, RECEIVED THEM WITH DUE HONOUR, THE KING SHALL, AT FIRST, PACIFY THEM WITH SOOTHING WORDS, AND THEN EXPLAIN TO THEM THEIR DUTY.—(391)

Bhāṣya.

What the king should do under the circumstances is now explained.

Having received each of the men with such honour as he deserves, by reason of his qualifications,—he should, '*with the assistance of Brāhmaṇas*'—his ministers and priests,—this 'assistance' being rendered in the *reception*, or in the explaining of duties. It is only in the latter that the true character of the Brāhmaṇa becomes revealed.

With the assistance of these Brāhmaṇas, he shall explain to them their duty.

The assistance of the Brāhmaṇas having been insisted upon, the declaration that the king shall explain the duties is meant to indicate the predominance of the king, who is to associate the Brāhmaṇas with himself. And this predominance is due to the fact that kings never lose their temper.

The king should explain the duties to them after having at first '*pacified them*'—*i.e.*, having soothed their temper—'*with soothing words*'—affectionate and complimentary words. —(391)

VERSE CCCXCII

IF, AT A FESTIVAL WHERE TWENTY TWICE-BORN MEN ARE INVITED, A BRĀHMAṆA DOES NOT ENTERTAIN HIS FRONTAL AND BACK NEIGHBOURS, WHO ARE QUITE WORTHY,—HE DESERVES TO BE FINED ONE 'MĀṢA.'—(392)

Bhāṣya.

'*Vēsha*' is that where people live, a dwelling-house; the house that is in the front of one's house is '*pratīvesha*'; and he who lives in that is the '*prativēshya*,' '*frontal neighbour.*' If we read '*prātivēshya*,' we would add the reflexive affix '*aṇ*.'

Similarly '*anuvēshya* 'is one dwelling at the back of one's house.'

Persons occupying houses on the two sides also are called 'neighbours'; hence the two terms '*prativēshya*' and '*anuvēshya*' may be taken as standing for persons occupying houses next, and on both sides, to one's own house.

If the man does not entertain these two, after having invited them to the '*festival*' in his house, in the shape of marriage and the like,—'at which *twenty other twice-born persons are invited*,'—then he should be made to pay a fine of one '*māṣa*.' That this '*māṣa*' is to be of gold is indicated by its being distinctly specified in another place.

'*Worthy*';—if the frontal and back neighbours are both worthy,—*i.e.*, neither inimical, nor absolutely unqualified.—(392)

VERSE CCCXCIII

THE VEDIC SCHOLAR WHO DOES NOT ENTERTAIN A WORTHY VEDIC SCHOLAR AT SUCH AUSPICIOUS RITES, SHOULD BE MADE TO PAY TWICE THE QUANTITY OF THAT MEAL, AND ALSO A 'MĀṢA' OF GOLD.—(393)

Bhāṣya.

This text refers to persons who are not neighbours. The rule here laid down pertains to fellow-students.

The Vedic scholar who does not entertain a duly qualified Vedic scholar at such '*auspicious rites*'—rites performed by virtue of the possession of wealth; such for instance as the feeding of many men and so forth; or 'rich' may be taken as an epithet of the 'rites'; the meaning in which case would be the rites, such as marriages and the like, which are performed on a lavish scale; where more than twenty men are fed;—if at such times, the Vedic scholar does not feed a fellow-scholar, he should be made to offer twice the quantity of the food that would be offered at the rich rites; and one '*māṣa*' of gold shall be paid to the king as fine.—(393)

VERSE CCCXCIV

A BLIND MAN, AN IDIOT, A CRIPPLE, AN OLD MAN OF SEVENTY, AND ONE WHO ATTENDS UPON VEDIC SCHOLARS SHOULD NOT BE MADE TO PAY ANY TAXES BY ANY ONE.—(394)

Bhāṣya.

'*An old man of seventy*';—the instrumental ending in '*saptatyā*' is on the analogy of such expressions as '*prakṛtyā virūpaḥ.*' The man who has passed seventy years of age is so called.

One who '*attends upon*'—serves, either with personal attendance, or as a craftsman.

These men should not be made to pay any taxes,—such as working for the king for one day in the month, as laid down for craftsman under 7. 138;—by a king, even when his treasury has become depleted. This is what is meant by the phrase '*by any one.*'—(394)

VERSE CCCXCV

THE KING SHOULD ALWAYS RESPECT THE VEDIC SCHOLAR, THE SICK AND THE DISTRESSED, THE INFANT AND THE AGED, THE INDIGENT, THE MAN OF HIGH FAMILY AND THE GENTLEMAN. —(395)

Bhāṣya.

'*Respecting*' here stands for *kindly treatment*; veroal roots having several meanings. No other kind of 'respect' would be possible in the case of the infant and several others. The '*Vedic scholar*' has been held here to mean the Brāhmaṇa scholar only.

'*Distressed*,'—by separation from his loved ones or such other causes.

'*Indigent*'—in reduced circumstances.

'*The man of high family*'—one who is born in a family endowed with fame, wealth, learning, bravery and such other qualities.

'*Gentleman*'—one who is honest and upright of nature.

All these should be received with kind treatment, in the shape of gifts and honours.

Some people explain the term '*indigent*' as qualifying '*the man of high family*.'—(395)

VERSE CCCXCVI

THE WASHERMAN SHALL WASH (CLOTHES) GENTLY ON A SMOOTH BOARD OF COTTON-TREE WOOD; HE SHALL NOT CARRY CLOTHES IN OTHER CLOTHES; NOR SHALL HE ALLOW THEM TO BE WORN.—(396)

Bhaṣya.

The '*cotton tree*' is a kind of tree; the board should be made out of this tree; because its wood is naturally soft

and '*smooth,*' so that when the clothes are beaten upon it, their component parts do not become torn.

'*Gently*'—so that the clothes being beaten do not become torn.

The injunction regarding the particular wood is not with a view to any transcendental result; hence there would be nothing wrong in using any other wood, if it satisfied the said conditions.

'*Smooth*'—not rough.

'*Clothes*'—belonging to one man,—he shall not '*carry*'—tie up and carry to the washing place—'*in other clothes*'—belonging to another person; so that the clothes may not be torn by the tying, in which they undergo a great strain.

'*Nor shall he allow them to be worn*';—he shall not give over, for a consideration, to one man the clothes belonging to another, for wearing. This is what is meant by 'allowing to wear'; the other man does the *wearing*, and it is the washerman that *allows* him to do it.

Since no penalty has been laid down in this connection, we have to take it as consisting of the '*māṣa* of gold' which has been laid down before.—(396)

VERSE CCCXCVII

THE WEAVER SHALL REPAY TEN 'PALAS' WITH ONE 'PALA' ADDED TO IT; IF HE ACTS OTHERWISE THAN THIS, HE SHOULD BE MADE TO PAY A FINE OF TWELVE.—(397)

Bhāṣya.

The '*weaver*' is one who weaves yarns, and makes clot' for garments, etc.

When he has received '*ten palas*' of yarn, he should return a piece of cloth weighing one more '*pala.*' He should make his repayments at this rate of interest. Special

considerations may be made in regard to the coarseness or fineness of the texture of the cloth, or to the fact of its being wooly and so forth.

Otherwise there shall be a fine of twelve '*paṇas*.'

This punishment is to be inflicted in the case of non-payment of the *interest*. In the case of non-payment of the *principal*, he would have to pay according to the rule laid down by the guild.

Thus in the case of the principal consisting of '*twenty palas*' of yarn, if the man does not pay the interest, his fine shall be double; and so on, the fine being computed triple, quadruple and so forth.

Others hold that the fine is to be paid to the king. —(397)

VERSE CCCXCVIII

THE KING SHALL TAKE ONE-TWENTIETH OF THE PRICE OF SALEABLE COMMODITIES, THAT MAY BE FIXED BY MEN WHO HAVE EXPERIENCE OF CUSTOM-HOUSES AND ARE EXPERTS IN ALL KINDS OF MERCHANDISE.—(398)

Bhāṣya.

'*Custom-houses*' are those places where duties and tolls are realised, as fixed by the king and the merchants in accordance with the special conditions of each country. Those who have experience of these are the 'custom-house officials'; these men cannot be hoodwinked by clever rogues.

Similarly there are men who are '*experts in all kinds of merchandise*,' *i.e.*, who know all about the demand and supply, the good and bad qualities and such details regarding all commodities.

When things are brought by merchants in boxes from other countries, the said experts fix their prices; and of this price the king shall take the twentieth part.

"What is the use of the valuation? It would be enough to say that the king shall receive the twentieth part of each commodity."

This would be all right in cases where the king realises his dues *in kind*. But in the case of such cloth-pieces as are used in the form in which they are sold, the twentieth part could not be taken without tearing each piece. Hence it is that valuation becomes necessary.

In the case of unsaleable commodities, or of articles meant for personal use, there are no duties, hence the text adds the term '*yathā-paṇyam*,' '*saleable commodities*.'

The valuation has to be done in accordance with several considerations of time, place and other circumstances; for instance, all commodities do not sell at the same price at all times; so that the price of any article cannot be regarded as fixed for all time.—(398)

VERSE CCCXCIX

THOSE COMMODITIES THAT HAVE BEEN PROCLAIMED AS THE 'KING'S MONOPOLY,' AND THOSE THAT ARE FORBIDDEN,—IF ANY ONE, THROUGH GREED, EXPORTS THESE, THE KING SHALL CONFISCATE ALL HIS PROPERTY.—(399)

Bhāṣya.

Those commodities that have been '*proclaimed*' to belong to the king's monopoly,—*e.g.* elephants in the eastern countries, saffron, silks and woolens in Kashmir, horses among the western countries, precious stones, pearls, etc., among the southern countries; in fact such articles as are easily obtainable in the dominions of the king concerned, but rare in other countries. Kings come to a mutual understanding among themselves regarding all such commodities.

'*Forbidden*'—*i.e.*, those in regard to which the king has ordered that they should not be exported outside his

dominions; *e.g.* during famines, the exporting of food-grains is prohibited.

'*Through greed,*'—if some one exports for sale such commodities to other countries, the king shall confiscate all his property.

This punishment is meant for one who does the exporting with a view to profiteering. If they are carried for being presented to a foreign king, then the punishment shall be severer in the form of imprisonment and other forms of corporeal punishment.—(399)

VERSE CD

IF ONE WHO BUYS AND SELLS AVOIDS A CUSTOM-HOUSE, AND AT THE IMPROPER TIME, OR MAKES A WRONG STATEMENT IN COUNTING,—HE SHALL BE MADE TO PAY A FINE EIGHT TIMES THE AMOUNT EVADED.—(400)

Bhāṣya.

'*Who buys and sells*'—*i.e.*, the trader.

'*Who avoids the custom-house*'—by taking to unfrequented roads.

'*At the improper time*'—at night, when the custom-officers have gone away.

'*Who makes a wrong statement in counting,*'—when counting the articles, if he mentions a figure larger than the actual one. 'Counting' is mentioned only by way of illustration; hence the same rule applies to case of *concealment* also.

Such a man should be made to pay a fine '*eight times the amount evaded*';—*i.e.*, eight times the value of the articles that he conceals; or eight times the duty that he tries to evade. The former is more reasonable; as 'evading' would be more applicable to the *articles.*

Others have offered the construction—'*who buys and sells at the improper time*';—this would be a prohibition of

carrying on transactions before the duty has been paid, or in secret.—(400)

VERSE CDI

THE KING SHALL REGULATE THE PURCHASE AND SALE OF ALL MARKETABLE COMMODITIES AFTER HAVING TAKEN INTO CONSIDERATION THEIR SOURCE, DESTINATION AND DETENTION, AS ALSO PROFIT AND LOSS.—(401)

Bhāṣya.

The vendors in the market should not be allowed to fix their prices at their own will; nor should the king buy things at his own arbitrary price. What should be done then? This is what should be done :—'*Source*' from where a certain commodity comes, from a near or a remote country ;—so also '*destination and detention*'—whether it is going to be sold immediately, or will have to be kept? When a commodity is sold immediately, even a small profit comes very useful, as the profit can be invested in some other commodity and thus bring in another profit ;—while from 'detention,' both 'profit and loss' are possible—and how much more profit will the detention bring in, and what amount of loss it would involve,—all this should be taken into consideration by the king, who should then regulate the sales and purchases in his realm; and the prices should be fixed in such a manner that there may be no oppression caused to the traders, or to the buyers.—(401)

VERSE CDII

AFTER THE LAPSE OF EVERY FIVE DAYS, OR AFTER THAT OF EVERY FORTNIGHT, THE KING SHALL PUBLICLY FIX THE PRICES OF THINGS.—(402)

Bhāṣya.

In as much as the source and destination and other circumstances concerning commodities are variable, there are

several rises and falls in their prices. Hence the fixing of the price should be done publicly after every five days; and it should not be regarded as done once for all; nor should entire reliance be placed upon the traders alone; the king himself should be always wide awake.

In connection with articles that take a long time to be disposed of, the prices should be fixed every fortnight, while in other things it should be done after every five days.—(402)

VERSE CDIII

SCALES, WEIGHTS AND MEASURES SHOULD BE DULY MARKED; AND THEY SHOULD BE RE-EXAMINED AFTER EVERY SIX MONTHS.—(403)

Bhāṣya.

'*Scales*'—well known.

'*Weights*'—Seer, 2½ seers and so forth.

'*Measures*'—whereby gold and other similar things are weighed.

All this should be duly marked—with the royal sign—on all sides; the king should himself examine them and mark them with his own seal.

After every six months he should have them re-examined by his officers, so that no one might tamper with them.—(403)

VERSE CDIV

AT A FERRY-CROSSING, A CART SHALL BE MADE TO PAY ONE 'PAṆA'; ONE MAN'S BURDEN HALF A 'PAṆA,' AN ANIMAL AND A WOMAN A QUARTER 'PAṆA,' AND AN UNLOADED MAN ONE HALF OF A QUARTER.—(404)

Bhāṣya.

At a river-crossing, a '*cart*'—a conveyance, in the form of a chariot and other things,—should pay one '*paṇa*.' This

is the king's tax to be paid by all carts that come in loaded with commodities and go out again after having delivered these commodities, for bringing in another supply.

'*One man's burden*'—when one man's load of commodities is brought in, the duty payable is *half-paṇa.*

'*Animal*'—bullock, buffalo and the like;—as also a '*woman*'—should pay a *quarter-paṇa.*

'*The unloaded man,*'—who is carrying no load, should be made to pay half of the *quarter-paṇa.* A small toll is levied from the unburdened man, since he can cross the river by himself, and hence the help accorded to him is comparatively small. While a woman, who is unable to cross by herself, is made to pay more.

'*On a ferry-crossing*'—for the purposes of crossing.—(404)

VERSE CDV

CARTS LADEN WITH COMMODITIES SHOULD BE MADE TO PAY THE FERRY-TOLL ACCORDING TO THEIR VALUE; THOSE NOT LADEN WITH COMMODITIES MAY PAY A TRIFLE, AS ALSO MEN WITHOUT LUGGAGE.—(405)

Bhāṣya.

'*Commodities*'—goods, such as clothes, grains and so forth; when carts are laden with these, they should be made to pay the ferry-toll, in accordance with their 'value.' If they are laden with cloth and other things of great value, they should pay heavily; while if they are carrying only grains and other cheap things, they should pay less.

Similarly the toll to be paid may be regulated in accordance with the lesser or greater difficulty involved in crossing a particular river.

Carts not laden with commodities may pay '*some little trifle*'—*i.e.*, a *paṇa.*

The term '*commodity,*' '*bhāṇḍa,*' here stands for *riches.*

Those men who are without any luggage shall pay, not half of the *quarter-paṇa* (as laid in 404), but any little trifle, more or less; and no hard and fast rule can be laid down on this point. Such is the sense of the scriptures.—(405)

VERSE CDVI

FOR A LONG PASSAGE, THE BOAT-FARE SHOULD BE IN PROPORTION TO THE TIME AND PLACE; THIS SHOULD BE UNDERSTOOD TO BE THE RULE REGARDING THE BANKS OF RIVERS; IN CONNECTION WITH THE SEA, THERE IS NO FIXED RULE.—(406)

Bhaṣya.

The toll mentioned in the foregoing verses is to be paid for the crossing of rivers; what is now declared relates to the passage by boat from one village to another.

'*For a long passage*'—*i.e.*, in a journey that is measured by miles.

'*In proportion to the place*'—*i.e.*, according to the freight-rates that may have been fixed by the boatmen of the place concerned.

'*In proportion to the time*,'—the fare payable during the rains, or where there is plenty of water, shall be different from that payable in a river where there is very little water; in the latter case there is much time taken in going from one village to another, and it involves more labour on the part of the boatmen,—hence the fare in this case would be heavier.

The term '*tara*,' which literally means *crossing*, which is the effect of the *fare* that is paid, has been used here for this latter. The sense is that the amount of fare payable goes on increasing in proportion to the distance traversed.

'*This should be understood to be the rule regarding the banks of rivers.*'

'*In regard to the sea, there is no settled rule*'—regarding fares. Since it cannot be ascertained how many miles the

boat has been carried, according to which the distance and the fare could be computed. In the case of rivers and lakes, it can be ascertained whether the distance traversed is one *Yojana* (8 miles) or two; because the villages serve as the measuring points; so that the fare paid for a journey of two would be double of that paid for that of one *Yojana.* In the sea, on the other hand, the boat can be taken with great difficulty, and distances also cannot be measured; it is for this reason that it has been declared that '*as regards the sea there is no settled rule.*'—(406)

VERSE CDVII

BUT A WOMAN WHO IS PREGNANT TWO MONTHS OR MORE, AN ASCETIC, A HERMIT, AND BRĀHMAṆAS IN HOLY ORDERS SHALL NOT BE MADE TO PAY THE TOLL AT A FERRY-CROSSING.—(407)

Bhāṣya.

If two months have elapsed since the last monthly course, it is a sign that the woman is pregnant, such a woman deserves kindly treatment; hence no ferry-toll is to be realised from her.

'*Ascetic*'—belonging to the fourth order.

'*Hermit*'—living in the forest and performing austerities.

Brāhmaṇas in holy orders'—the term '*brāhmaṇa*' has been added as a qualification; hence the rule does not apply to those who only bear the garb of asceticism.

'*Toll*'—fare for crossing, in the form of a '*paṇa*' and so forth.

This they shall not be made to pay.

Having mentioned 'toll' already, the author has added the term '*at a ferry-crossing*' only in consideration of metrical exigencies.—(407)

VERSE CDVIII

IF ANYTHING ON THE BOAT HAPPEN TO BE DAMAGED BY THE FAULT OF THE BOATMEN,—IT SHALL BE MADE GOOD BY THE BOATMEN COLLECTIVELY, EACH ACCORDING TO HIS SHARE.—(408)

Bhāṣya.

When a commodity placed on the boat happen, in course of the crossing, to be damaged '*by the fault of the boatmen,*'—*i.e.*, by steering the vessel through pools and eddies, or not anchoring when facing a storm, or by not securely tightening up the boat with chains of iron or leathern thongs,—then they should make it good,—'*each according to his share,*'—to the owner of the commodity.

'*Collectively*'—*i.e.*, all the boatmen that may be on the boat—(408)

VERSE CDIX

THIS LAW HAS BEEN LAID DOWN IN CONNECTION WITH SUITS BY BOAT-PASSENGERS RELATING TO THE NEGLIGENCE OF BOATMEN IN WATER; THERE IS NO PUNISHMENT IN THE CASE OF ACCIDENTS DUE TO HEAVEN.—(409)

Bhāṣya.

'*Boat-passengers*'—persons habituated to going about in boats.

It is with regard to these that this law has been laid down, that 'if anything should be damaged by the fault of the boatmen, it shall be made good by them.'

'*In the case of accidents due to heaven*'—*i.e.*, when the boat breaks as the result of an accident due to storm or such causes, and commodities happen to be damaged,—no punishment is to be inflicted upon the boatmen.

This same law applies to the carriers of goods on land also. If the carrier walks along with due care, supporting himself by a staff, and has duly tied up the bundles, if he happens to tumble down on the road which has suddenly been rendered slippery by rain, and the goods he is carrying *become damaged in consequence,—whose fault could it be* held to be?—(409)

VERSE CDX

HE SHALL MAKE THE VAISHYA TO CARRY ON TRADE, MONEY-LENDING, AGRICULTURE,—AND CATTLE-TRADING; AND THE SHUDRA TO PERFORM SERVICE FOR THE TWICE-BORN CASTES.—(410)

Bhāṣya.

Some people explain this text as follows:—"The *Vaishya* and *Shūdra* should be made to do the work here mentioned, even though they be unwilling to do so; since such is their duty. Even though the law is laid down for a visible purpose, yet from the very nature of the restrictive injunction, it has to be regarded as indicating a transcendental result also. Such being the sense of the text, it comes to this that the Brāhmaṇa also should be forced to accept gifts. If it be held that such acceptance has been held, in certain cases, to be improper, then the same may be said regarding the case in question also."

This however is not right. What the injunction contained in the verse does is to lay down the methods to be adopted by certain men *if they are desirous of acquiring wealth*; and it does not mean that they must act as here laid down. Man's activity is not always determined by injunctions; *i.e.*, there is no need for an injunction in a case where there is some motive already present. It is only in the *restriction* that lies the use of the injunction; and the restriction in the present case is that it is *the Vaishya only* who should be made to carry on

trade; so that if any other man do that work, except in times of distress, he should be punished by the king. Similarly it is the *Brāhmaṇa only* who should accept gifts; but if he happens to be contented, he may desist from receiving gifts, though quite capable of receiving them. As regards the statement in verse 412 below, that is purely declamatory. Similarly it is the *Shūdra only* who should be made to perform service; and so on, the sense of the restriction may easily be explained—(410)

VERSE CDXI

A Brāhmaṇa shall, through compassion, support a Vaishya and a Kṣattriya, who are distressed for a livelihood, and should make them do his own work.—(411)

Bhāṣya.

The Brāhmaṇa shall support them, if they are '*distressed for a livelihood,*' by giving them food and other things; *i.e.,* he shall support the *Kṣattriya* and the *Vaishya.*

'*Through compassion*'—through pity.

'*Should make them do his own work.*'—The Brāhmaṇa's 'own work' consists in the fetching of fuel, water and such things.

Or, the meaning may be that he should make them perform such duties as are the *Kṣattriya's and the Vaishya's* own. That is, the *Kṣattriya* should be employed in guarding the village and so forth, and the *Vaishya* in cultivating the land, tending the cattle and so on.

This law relates to the Brāhmaṇa who is possessed of much wealth and property and is, as such, capable of supporting others.

'*Own work;*'—the phrase implies that he should not employ them in personal attendance, or in any such mean work as the washing of unclean things and the like.—(411)

VERSE CDXII

IF THE BRĀHMAṆA, THROUGH THE SENSE OF MASTERY, AND OUT OF GREED, MAKES SANCTIFIED TWICE-BORN PERSONS DO SERVILE WORK, AGAINST THEIR WILL,—HE SHOULD BE FINED BY THE KING SIX HUNDRED.—(412)

Bhāṣya.

'*Sanctified*'—those for whom the initiatory rite has been performed. Though this is already implied by the term '*twice-born*' itself, yet the additional qualification has been added in order to guard against this latter word being taken in the sense of all the three castes promiscuously. The sense of the text is that if a Brāhmaṇa makes fellow caste-men perform such 'servile work' as the washing of feet, the removing of offal, sweeping and so forth,—'*against their will*';—because he is their master,—*i.e.*, possessed of the rights of the master over them,—'*he should be fined six hundred*,'—if he does it '*through greed*.' If he does it through hatred and such other motives, the fine shall be heavier.

The form '*prābhavatya*' is an abstract noun formed from the present participial term '*prabhavan*.' And since the text speaks of '*mastery*,' which implies the idea of master and servant, there would be nothing wrong in the preceptor's menial work being done by the pupil.

'*Against their will*'—this shows that if they are willing, the fine shall be very small.—(412)

VERSE CDXIII

BUT A SHŪDRA, WHETHER BOUGHT OR UNBOUGHT, HE SHALL MAKE TO DO SERVILE WORK; SINCE IT IS FOR DOING SERVILE WORK FOR THE BRĀHMAṆA THAT HE HAS BEEN CREATED BY THE SELF-BORN ONE.—(413)

Bhāṣya.

'*Bought or unbought*'—*i.e.*, engaged on fooding.

This is a reference to the law going to be laid down below (under 415).

'*It is for doing servile work, etc.*'—this is purely declamatory.—(413)

VERSE CDXIV

EVEN THOUGH SET FREE BY THE MASTER, THE SHŪDRA IS NOT RELEASED FROM SERVICE; SINCE THAT IS INNATE IN HIM, AND WHO CAN RELEASE HIM FROM IT?—(414)

Bhāṣya.

Even though '*set free*' by the master to whom he belongs, by the seven modes of slavery,—*i.e.*, even though emancipated by him.

Service is '*innate in him*,'—is in the very nature of his caste.

Who can therefore release the *Shūdra* from servitude? Just as the Shūdra-caste cannot be removed from him, so also servitude.

This is purely declamatory; since it is going to be declared later on that under special circumstances, the Shūdra does become released from *servitude*.—(414)

VERSE CDXV

THERE ARE SEVEN KINDS OF SLAVES—(1) CAPTURED UNDER BANNER, (2) SLAVE ON FOOD, (3) BORN IN THE HOUSE, (4) BOUGHT, (5) PRESENTED, (6) HEREDITARY, AND (7) SLAVE BY PUNISHMENT.—(415)

Bhāṣya.

The term '*Dhvajā*' '*banner*' stands for the *chariot*;

hence '*Dhvajinī*' means the *army*; he who is captured '*under the banner*' is the captive of war, who is made a slave.

"What is stated here,—does it refer to the *Kṣattriya*,—the meaning being that the Kṣattriya made captive in war becomes a slave?"

Not so, we reply; since it is the *Shūdra* that forms the subject-matter of the context; as is clear from the preceding statement—'it is for the purpose of servitude that he has been created.' What the text refers to is the case where the owner of the slave having been defeated in battle, the slave is brought over and enslaved by the captor.

"As a matter of fact, servitude has been declared to be for *all Shūdras*—when for instance it was asserted that servitude is 'innate in him.'"

It is not so; for in that case there would be a great confusion; as it would not be ascertained to whom a certain slave belongs; since all the three higher castes would be their masters, to be served by them. Hence there would be no restriction. Then again, all that has been asserted before (regarding servitude being 'innate' in the *Shūdra* and all that) is not of the nature of an injunction. Further, there is the declaration that 'among the castes each of the following shall serve the preceding' (Gautama, 10.66),—by which the *Kṣattriya* and the *Vaishya* also would have to be regarded as slaves.

All this however is not right. 'Serving' is one thing and 'slavery' is another. Slavery consists in doing servile work, and in not objecting to going anywhere he may be sent to; while 'service' may consist in shampooing the body, guarding the family or property and so forth. All this has been dealt with in detail by Nārada.

'*Slave on food*'—he who has accepted slavery for obtaining food.

'*Born in the house*'—*i.e.*, born of a slave-girl.

'*Bought*'—from the former master, for a price.

'*Presented*'—given to one, either through love, or for the purpose of acquiring spiritual merit.

'*Hereditary*'—who has belonged to the family through a line of ancestors.

"What is the difference between this last and the slave *born in the house* ?"

The latter is one born of a slave-girl that may have been acquired by the master himself, while the other is hereditary.

'*Enslaved for punishment*'—one who, being incapable of paying the king's fines, is made a slave.

In fact, according to some people, such slaves are possible for the other castes also, in view of what has been said regarding the propriety of repaying a debt even by manual labour.

But this is not right; as 'slavery' is one thing and 'doing manual work' is something totally different. Nor is the case cited a case of 'punishment,' whereby it could be included under the present head. Then again, when it is said that debts may be repaid 'by manual work also,' it does not necessarily mean 'slavery,' though this also may be one kind of 'work.'

"When the *Shūdra* works as a slave entirely through considerations of his duty, why should there be only *seven* kinds of slaves ?"

There is no force in this objection. Because in his case 'slavery' is not innate in him; it is purely voluntary with him; he having recourse to it only with a view to acquiring merit. And further, such a slave cannot be given away or pledged;—as the bought and house-born slaves can. In fact the *Shūdra* in question is guided by what has been declared (under 10.128) regarding the Shūdra 'imitating the behaviour of the virtuous, etc., etc.'; and by this it is clearly implied that slavery is not inherent in him; he takes to it only with a view to a definite result. Hence there is real 'slavery' only when it is involuntary. So that if a *Shūdra* has property of his own and lives upon it, not supporting himself by depending upon the Brāhmaṇa and others, he does nothing wrong.—(415)

VERSE CDXVI

THE WIFE, THE SON AND THE SLAVE,—THESE THREE ARE DECLARED TO HAVE NO PROPERTY; WHATEVER THEY ACQUIRE IS THE PROPERTY OF HIM TO WHOM THEY BELONG.—(416)

Bhāṣya.

These three are without property, even though they may acquire property. Property can belong to one *who has possession*; while whatever property the said persons acquire is in the possession of him to whom they themselves belong; so that the property of the wife belongs to the husband, that of the son to the father and that of the slave to the master.

"If these persons have no property, how can they be entitled to the performance of any rites? So that it would not be right to assert that—'if two sons should have kindled the consecrated fire, they should offer the oblations to those for whom the father offers them.' Then again, it is necessary for the husband and wife to perform religious rites jointly, the husband being exhorted not to ignore the wife in matters relating to religious acts, pleasure and wealth? If however the wife has no property, what would be her *ignoring* in regard to wealth? Further, the *Shūdra* also has got to make certain offerings of cooked food; and this also would be incompatible with the fact of his having no property. There would be no such incompatibility if the injunction regarding these offerings were taken as referring to such *Shūdras* as are free (and hence possess property). But as a matter of fact, *slaves* also have proprietary rights over their property, which is, on that account, called their *own property*. For these reasons it is wrong to say that '*what they acquire is the property of him to whom they belong.*' This is exactly like the assertion 'she whose son I am is not my mother.' Further, if women had no proprietary right, there would be no sense in such shruti-declarations as—'the wife should obey,' 'the

wife should follow in the footsteps of her married' and so forth."

Our answer to the above is, as follows:—What is meant by the text is only that they are *dependent, subservient*; the meaning being that 'without the husband's sanction, the wife should not employ her wealth anywhere she may choose.' Similarly with the son and the slave.

Others however hold that the 'wife' and the 'son' have been mentioned only by way of illustrating the status of the slave; and the latter is mentioned for the purpose of declaring, in reference to him alone, what follows in the next verse, which means that in times of distress the master should feel no hesitation in taking what belongs to the slave; as in reality it is the master's own property.—(416)

VERSE CDXVII

THE BRĀHMAṆA MAY CONFIDENTLY HAVE RECOURSE TO SEIZING THE GOODS OF THE SHŪDRA; AS THE LATTER HAS NO PROPERTY, AND HIS PROPERTY IS MEANT TO BE SEIZED BY THE MASTER.—(417)

Bhāṣya.

In this connection some people assert that what is stated here is in reference to the *Shūdra* who has volunteered, through religious motives, to be a slave.

This however is not right; as there is nothing to show that it refers to any particular case. Hence what is meant is that the Brāhmaṇa may take the wealth of the *Shūdra* who is the slave of all.

'*Confidently*'—without hesitation. He should never have any such doubt as to how he can seize the *Shūdra's* goods, such seizing being forbidden. Since there is no property that really belongs to the *Shūdra*. Specially because in such cases the *master* is not deprived of his possession; since the *Shūdra* acquires property only for the purpose that his master may

make use of it. Hence the Brāhmaṇa should seize the goods '*confidently*.' Even where it is presented by the *Shūdra*, he should use it as if it had been in his own house.

It is only when there is actual need that this can be right. Hence it is only when the Brāhmaṇa has no property of his own that he incurs no sin by seizing the goods of his *Shūdra-slave*.—(417)

VERSE CDXVIII

THE KING SHALL MAKE THE VAISHYA AND THE SHŪDRA CAREFULLY TO PERFORM THEIR DUTIES; FOR BY SWERVING FROM THEIR DUTIES THEY WOULD DISTURB THIS WORLD.—(418)

Bhāṣya.

By neglecting their own duties they would '*disturb*'—throw into confusion—'*this world*.' Hence the king should carefully see to it that they do not swerve from their duties. Even Vaishyas should be punished, with a heavy fine, even on a slight transgression. Though there is to be no imprisonment for him, yet money-penalties are quite possible.—(418)

XLIX. Summing-up

VERSE CDXVIV

DAY AFTER DAY HE SHALL LOOK AFTER HIS BUSINESS-CENTRES, HIS CONVEYANCES, HIS INCOME AND EXPENDITURE REGULARLY, AND MINES AND TREASURY.—(419)

Bhāṣya.

This verse shows the purpose of indicating all the duties of the king.

'*Business-centres*'—agricultural stations, customs-house and so forth.

'*Conveyances*'—elephants and the rest.

'*Income and expenditure*'—so much has come in, and so much has been spent. This should be looked into '*regularly*,' constantly.

'*Mines*'—places whence gold and other minerals are brought out.

'*Treasure*'—the place where money is deposited.—(419)

VERSE CDXX

THE KING WHO COMPLETES ALL THIS BUSINESS, REMOVES ALL SIN AND ATTAINS THE HIGHEST STATE.—(420)

Bhāṣya.

In the aforesaid manner the king who completes all the '*business*' relating to the *Nonpayment of debts* and the rest,

—*i.e.*, carries them to their end,—removes all kinds of sin, and attains '*the highest state*' secured by him, in the shape of Heaven and Liberation.—(420)

Thus ends the *Bhāṣya* on Discourse VIII.

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(ADHYAYA VIII)